

present case, Intermedia's allegations not only fail to allege the requisite facts to show that BellSouth's litigation is not immune, they actually establish that the litigation cannot be a sham because they include the express recognition that BellSouth's position has been upheld. In light of BellSouth's success in Louisiana on the same issue and other similar successes by other companies in other states, BellSouth's decision to appeal the adverse rulings in three states cannot be considered a sham. Therefore, these allegations do not allege the elements set forth by the Supreme Court and do not state a claim.

**II. THE COURT SHOULD DISMISS THE REMAINING COUNTS OF THE COMPLAINT BASED ON THE EXCLUSIVE OR PRIMARY JURISDICTION OF THE STATE PSCs.**

**A. Courts Do Not Have Jurisdiction to Resolve Disputes Under the Telecommunications Act or Interconnection Agreements That Have Not Been Presented First to State Commissions.**

This Court does not have original jurisdiction over the remaining issues raised in Intermedia's Complaint because those claims must be presented to state PSCs for decision before federal district court review is available. "A district court is prohibited from exercising subject matter jurisdiction when it is found that Congress intended to preclude review." GTE North, Inc. v. McCarty, 978 F. Supp. 827, 833 (N.D. Ind. 1997)(citing Thunder Basin Coal Co. v. Reich, 510 U.S. 200, 201-03, 114 S. Ct. 771, 774 (1994)). Section 252(e)(6) of the Telecommunications Act, specifically limits the jurisdiction of federal district courts to review of state PSC decisions implementing that statute.<sup>5</sup> See GTE North Inc. v. McCarty, 978 F.

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analysis by the FCC, finding that the FCC had not adequately explained the basis for its ruling. Bell Atlantic Tel. Cos. v. FCC, 206 F.3d 1 (D.C. Cir. 2000).

<sup>5</sup> Intermedia's Complaint does not seek review in this case of state PSC decisions pursuant to 47 U.S.C. § 252(e)(6). Instead, Intermedia seeks to end-run the state PSCs by having this Court decide the merits of its disputes with BellSouth in violation of the complicated regulatory and technical issues attendant to the integrated network of facilities that together allow the worldwide transmission of voice and data. Experts in the field – regulators – should resolve these issues, not the Court – a policy codified by Congress in the Telecommunications Act of 1996.

Supp. 827, 835 (N.D. Ind. 1997) ("Congress has simply not given courts the authority to abstractly interpret the [Telecommunications] Act [of 1996]. Rather, the Telecommunications Act is to be interpreted and applied in the context of review of specific agreements, and then only after a state commission has taken final action with respect to such agreements.").<sup>6</sup> Accord, AT&T v. Ohio Bell Telephone Company, 29 F. Supp. 2d 855, 857 (S.D. Ohio 1998). (Characterizing AT&T's claims as an attempt "to obtain review of matters never adjudicated, reviewed or approved by the PUCO," the court found that it could not exercise subject matter jurisdiction over the new claims).

Addressing nearly identical issues, the court in Indiana Bell Tel. Co. v. McCarty, 30 F. Supp. 2d 1100 (S.D. Ind. 1998), reached the same conclusion that this Court should reach. In that case, the ILEC (Ameritech) appealed certain arbitration decisions of the Indiana Utility Regulatory Commission ("IURC") and AT&T asserted counterclaims based on the interpretation of certain portions of the parties' interconnection agreement that had been negotiated, but not arbitrated. In rejecting AT&T's claim that the court had subject matter jurisdiction over the counterclaims, the court noted that negotiated terms "were not submitted to arbitration or otherwise interpreted by the [IURC]" and that the IURC "did not address whether the negotiated terms were consistent with section 251, presumably, since approval of negotiated terms is not contingent on the terms' compliance with that section of the Telecommunications Act." Id. at 1104. In summarizing its holding on this issue, the court stated: "The IURC has not had the opportunity to address the issues raised in AT&T's counterclaims and circumventing the [IURC]

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<sup>6</sup> Based on similar reasoning, some of these district courts also held dismissal to be appropriate due to the complainants' failure to exhaust administrative remedies. E.g., GTE North Inc. v. McCarty, supra, at 838. Further, Georgia law provides that a party must first exhaust its administrative remedy before filing suit. See e.g., Norman v. United Cities Gas Co., 231 Ga. 788, 204 S.E. 2d 127 (1974). In

would jeopardize the entire system of review established by the Telecommunications Act [which] was designed to allow the state commission to make the first determination on issues prior to judicial review." *Id.* (emph. added). See also *AT&T v. Illinois Bell Tel. Co.*, 1998 WL 525437 (N.D. Ill. Aug. 18, 1998) (district court lacks subject matter jurisdiction prior to state commission action).

Similarly, in this case, just as in the *Ohio Bell*, and *Indiana Bell* cases, the parties have a state commission-approved interconnection agreement. Just as in those cases, this dispute is not a request for judicial review of a prior state commission decision. Instead, this case is merely an attempt to circumvent the regulatory process. It is irrelevant to this analysis that Intermedia has attempted to characterize BellSouth's alleged conduct as a failure to negotiate in good faith (Counts I and V), breach of contract (Count III), a violation of its statutory obligations (Counts II, IV, and VI) or business torts (Counts VII and VIII). The Complaint has a single focus: BellSouth's alleged defective performance of its obligations under the Telecommunications Act as expressed in the Interconnection Agreement. These claims must be brought to the state PSCs in the first instance. This Court should not exercise jurisdiction over Intermedia's claims.<sup>7</sup>

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this case, Intermedia has not and cannot plead in its Complaint that it has exhausted its administrative remedies with regard to its claims.

<sup>7</sup> Intermedia's claims based on Sections 251 and 252 must also be dismissed because these sections cannot support a private cause of action. Sections 251 and 252 of the Telecommunications Act provide for federal court jurisdiction only after the process of negotiation/arbitration is completed. The specific procedures and remedies outlined there, including the jurisdiction of the federal district court under Section 252(e)(6), control the rights and obligations of the parties under the interconnection agreement. "If there are problems with carriers (such as [BellSouth]) failing to satisfy these duties to their competitors, the Act establishes the sole remedy: state PUC arbitration and enforcement proceedings, with review by federal courts." *Goldwasser v. Ameritech Corp.*, 1998 WL 60878 \*11 (N.D. Ill 1998) Therefore, Sections 251 and 252 cannot serve as an independent source of authority for a private right of action under Section 206-207. See *AT&T v. Pacific Bell*, 60 F.Supp. 997 (N.D. Cal. 1999)."

**B. Even if this Court Believes That It Has Jurisdiction, This Court Should Defer to the State Public Service Commissions Under the Doctrine of Primary Jurisdiction.**

Even if the Court determines that it has subject matter jurisdiction over Intermedia's claims (which it does not), the Court should nevertheless defer to the administrative expertise of the state PSCs. The doctrine of primary jurisdiction is designed to "coordinate judicial and administrative decision making." Access Telecommunications v. Southwestern Bell Telephone Co., 137 F.3d 605, 608 (8th Cir. 1998). See, also, Allnet Communication Service v. National Exchange Carrier Association, 965 F.2d 1118, 1120 (D.C. Cir. 1992) ("The primary jurisdiction doctrine rests both on a concern for uniform outcomes (which may be defeated if disparate courts resolve regulatory issues inconsistently), and on the advantages of allowing an agency to apply its expert judgment."). Courts should refer matters to regulatory agencies under the primary jurisdiction doctrine where enforcement of a claim "requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body." U.S. v. Western Pacific R. R., 352 U.S. 59, 64, 77 S. Ct. 161, 165 (1956). Moreover, "[d]eferred to the agency may avoid unnecessary or premature disturbance of a complex regulatory scheme by a court's application of the antitrust laws." 2 ABA SECTION OF ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS (4th ed. 1997), at p. 1128.

Intermedia asserts that BellSouth violated the Telecommunications Act as well as the Interconnection Agreement between BellSouth and Intermedia. In addition to the general obligations which the Telecommunications Act imposes on ILECs, more specific obligations are set forth in the regulations issued by the FCC, in the interconnection agreements, and in the decisions and orders of the various state commissions. The issues raised by Intermedia cannot be viewed outside the context of the regulatory system. Because of this, courts have repeatedly



recognized that State commissions have jurisdiction not only to approve interconnection agreements when they are adopted, but also to interpret and enforce those agreements subsequently. See, e.g., Wisconsin Bell, Inc. v. Public Service Commission of Wisconsin, et al., \_\_\_ F.3d \_\_\_, 2000 WL 1010863 at \*12 (7th Cir. July 24, 2000) ("A state commission's authority to approve or reject interconnection agreements under the Telecommunications Act necessarily includes the authority to interpret and enforce, to the same extent, the terms of those agreements once they have been approved by that commission."); Southwestern Bell Tel. Co. v. Public Util. Comm'n of Texas, 208 F.3d 475, 479-80 (5th Cir. 2000)(same); Iowa Utils. Bd. v. F.C.C., 120 F.3d 753, 804 & n.24 (8th Cir. 1997), aff'd in part and rev'd in part on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999) (same).

At least two recent cases have applied primary jurisdiction with respect to the Telecommunications Act. In AT&T Communications of Virginia, Inc. v. Bell Atlantic-Virginia, Inc., 35 F. Supp. 2d 493 (E.D. Va. 1999), AT&T asked the federal district court to order Bell Atlantic to provide dialing parity (call completion using the same number of digits) for certain intrastate long distance telephone calls as required by the Telecommunications Act and to award AT&T damages for any delay in Bell Atlantic's implementation of such dialing parity. Bell Atlantic argued that the court should defer to the primary jurisdiction of the FCC, and dismiss the case, without prejudice. The court agreed, concluding:

We find that the 1996 Telecommunications Act establishes in clear, unmistakable language a duty on behalf of all ILECs, including Bell Atlantic, to implement intrastate intraLATA toll dialing parity. Equally clear, however, is that Congress left implementation of this duty to the FCC, see § 251(d)(1), and, with limitations, to the states. See § 271(e)(2)(B). The statute does not include sufficient instructions as to the manner or timing for carrying out this duty by which any court could enforce it directly.

Id., 35 F. Supp. 2d at 499.

In a similar case, a federal district court was asked to consider whether a joint marketing agreement between an ILEC, Ameritech, and a long distance provider, Qwest Communications, violated the Telecommunications Act because Ameritech, through the alliance with Qwest, was offering long distance services within its region before obtaining authority to do so from the FCC. In AT&T Corp. v. Ameritech Corp., 1998 WL 325242 (N.D. Ill. June 10, 1998), the district court concluded that the issues raised in the complaint were more properly referred, in the first instance, to the FCC for consideration.

In this case, Intermedia is asking the Court to declare that BellSouth is not fulfilling its obligations under the Telecommunications Act and the Interconnection Agreement. However, the obligations which BellSouth and other ILECs have under the Telecommunications Act are still being determined. As recently as last week, the FCC issued a new order relating to interconnection issues. In the Matters of Deployment of Wireline Services Offering Advanced Teleconnections Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 96-98 (FCC – 00- 297 Released August 10, 2000). Therefore, Intermedia is not asking this Court to determine whether BellSouth's actions satisfy some well-defined standard. Rather, Intermedia would have this Court – and not the FCC or the state public service commissions – establish the standard. It simply would be inappropriate for the Court to do so in light of the pervasive regulatory scheme established by the Telecommunications Act – a scheme still being fashioned by state and federal regulatory agencies.

Moreover, with respect to its complaints regarding the June 1998 Amendment, the specific issue raised by Intermedia in this case (the effect of the June 1998 Amendment on the

rate for reciprocal compensation) is presently the subject of four state PSC proceedings.<sup>8</sup> Those proceedings are still pending. Intermedia may seek judicial review of the PSC decisions which result from those proceedings. But, it is not appropriate to ask this Court to consider those same claims in this case. The risk of inconsistent adjudications of the same issue could not be greater than when a party is seeking the same relief in more than one forum.

Deference to the jurisdiction of state commissions is particularly compelling when one considers the unprecedented nature and scope of the relief that Intermedia seeks. In addition to compensatory damages, Intermedia seeks to have the court appoint a "special master" "to oversee BellSouth's interconnection activities and to assure compliance by BellSouth with existing and future Interconnection Agreement [sic] and its interconnection obligations to Intermedia under the Communications Act." Complaint, Prayer, ¶ 4(b). In other words, without any legal support, Intermedia would have this Court appoint a special master to assume the very responsibilities that Congress delegated to the FCC and the state PSCs. Further, Intermedia would have this Court enjoin BellSouth from submitting applications for authority to provide interLATA long distance service until this Court determines BellSouth's eligibility. See Complaint, Prayer, ¶ 4(b).

Congress expressly delegated this very responsibility to the FCC acting with the advice of state commissions and the Department of Justice. 47 U.S.C. § 271. Intermedia also seeks to have this Court pass on the validity of an amendment to the Interconnection Agreement

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<sup>8</sup> See In re Complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for Breach of Terms of Florida Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and Request for Relief, Florida Pub. Serv. Comm'n, Docket No. 991534-TP; In the Matter of: Intermedia Communications, Inc., v. BellSouth Telecommunications, Inc., North Carolina Utils. Comm'n, Docket No. P-55, Sub 1210; In re: Complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. to Enforce the Reciprocal Compensation Requirement of the Parties' Interconnection Agreement, Tennessee Reg.

(Complaint, Prayer, ¶ 3), even though Congress expressly delegated this responsibility as well to state commissions. 47 U.S.C. § 252(e)(4). Intermedia would also have this Court (a) award punitive damages (Complaint, Prayer, ¶ 2), (b) issue injunctive relief against violations of the Interconnection Agreement and “existing and future” obligations under the Telecommunications Act (Complaint, Prayer, ¶ 3); and (c) retain jurisdiction over this matter to assure BellSouth’s compliance with its obligations (Complaint, Prayer, ¶ 4(e)). In short, Intermedia wants this Court and the “special master” to be the regulators which supervise BellSouth’s compliance with its obligations under the Telecommunications Act and agreements entered pursuant to that statute. But, as explained previously, Congress delegated this authority to the FCC and the state PSCs.

In sum, the nature of the relief Intermedia is seeking in this case would, if granted, place this Court in the position of regulating BellSouth’s daily activities vis a vis CLECs such as Intermedia. Plainly, Congress did not intend for this Court to assume that role. The judicial resources of this Court should not be spent resolving issues that are plainly within the expertise and, more importantly, primarily, if not exclusive, the jurisdiction of the state PSCs. Therefore, the Court should dismiss this case and permit Intermedia to pursue its claims before the appropriate administrative agencies. See Reiter v. Cooper, 507 U.S. 258, 268-69, 113 S. Ct. 1213, 122 L. Ed. 2d 604 (1993).

**C. The Dispute Resolution Clause in the Interconnection Agreement Mandates That Disputes under the Interconnection Agreement Be Resolved by the State PSCs.**

Even without the clear direction provided by Congress, an equally compelling reason for dismissing Intermedia's Complaint and referring the parties' disputes to the state PSCs is found in Section XXIII of the PSC approved Interconnection Agreement. That section, entitled "Resolution of Disputes" provides:

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the individuals in each company that negotiated the Agreement. If the issue is not resolved within thirty days, either party may petition the Commission for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

The Interconnection Agreement's dispute resolution provision mandates that, if a dispute arises, the parties will attempt to resolve it through the representatives of each company who negotiated the agreement. The agreement provides a thirty-day period during which the parties attempt to resolve the dispute amicably. After thirty days, if the dispute is not resolved, either party has the option to bring the matter to the appropriate Commission for resolution. The word "may" is used because the Interconnection Agreement affords either party the right to seek dispute resolution at the PSCs if the initial negotiations prove unsuccessful. In other words, it is mandatory that unresolved disputes be presented to Commissions for resolution; it is optional as to which party may initiate the proceeding before the state PSC. In this context, the statement that "either Party may petition the Commission for a resolution of the dispute," is a mandatory forum selection provision which requires unresolved disputes arising out of the Interconnection Agreement to be brought before the state PSCs.

Recently, the Eleventh Circuit in Florida Polk County v. Prison Health Services, Inc., 170 F.3d 1081 (11th Cir. 1999), upheld the enforcement of a forum selection clause under analogous circumstances. In that case, an indemnity agreement contained a forum selection clause which vested jurisdiction regarding the rights and obligations of either party under the agreement in the circuit court of Polk County, Florida. Id. at 1083. The clause apparently did not state expressly that no other court could exercise jurisdiction over the parties' dispute. Nevertheless, the Eleventh Circuit rejected the defendant's argument that the forum selection clause was merely permissive, rather than mandatory. The court emphasized that to hold that the forum selection clause was permissive would be to render the clause "surplusage" because the designated court already had the authority to entertain the controversy at issue. Id. at 1084. Accordingly, the only means of giving the clause meaning was to interpret it as a mandatory forum selection clause requiring the parties to litigate their claims in the circuit court of Polk County:

It is a venerable principle of contract law that the provisions of a contract should be construed so as to give every provision meaning. To read the forum-selection clause as permissive would render it surplusage, because the circuit court of Polk County -- for the reasons stated above -- already had the authority to entertain any controversy arising out of the contract. To read the clause as mandatory -- thus requiring all litigation arising out of the contract to take place in the circuit court of Polk County -- gives the provision meaning. If we were to accept PHS's argument, therefore, we would be forced to disregard a fundamental principle of contract law. We refuse to do so.

Id. at 1804 (citations omitted); see, also, Triad Systems Financial Corporation v. Stewart's Auto Supply, Inc., 47 F. Supp. 2d 1332, 1336 (N.D. Ala. 1999) ("the Eleventh Circuit does not treat a forum selection clause that simply concedes jurisdiction in a particular forum any differently from a clause that provides exclusive jurisdiction").<sup>9</sup>

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<sup>9</sup> See also American Italian Pasta Co. v. Austin Co., 914 F.2d 1103 (8<sup>th</sup> Cir. 1990) (arbitration was mandatory even though arbitration clause used the term "may."); Deaton Truck Line, Inc. v. Local Union 612, 314 F.2d 418 (5<sup>th</sup> Cir. 1962) (arbitration was mandatory even though

Here, as in Florida Polk County, state and federal law already permit Intermedia to raise its claims against BellSouth before the applicable state PSCs. To interpret the Interconnection Agreement's forum selection clause as a restatement of that principle, *i.e.*, that Intermedia merely has an option of raising its claims before the State PSCs, would render it mere "surplusage." However, to read the Interconnection Agreement's forum selection clause as mandatory, thereby requiring all claims to be brought to the state PSCs in the first instance, gives the provision meaning. Accordingly, as the Eleventh Circuit recently held in Florida Polk County, this Court should construe the Interconnection Agreement's dispute resolution provision as mandatory so as to give it meaning. To do otherwise would promote semantics over substance. See BLACK'S LAW DICTIONARY, p. 979 (6th ed. 1990) ("courts not infrequently construe 'may' as 'shall' or 'must' to the end that justice may not be the slave of grammar").

This action should not lie in federal court because the forum selection/venue selection clauses contained in the Agreement is controlling. The Agreement provides that issues relating to disputes as to interpretation and/or implementation of the Agreements belong first at the state regulatory commissions, not federal court. The Court need make no further inquiry. See, e.g., Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10, 92 S. Ct. 1907, 1913-14 (1972); Antec Corp. v. Popcorn Channel, L.P., 482 S.E.2d 509 (Ga. App. 1997); In re Ricoh Corp., 870 F.2d 570 (11th Cir. 1989).<sup>10</sup>

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arbitration clause used the term "may."); Block 175 Corp. v. Fairmont Hotel Mgmt. Co., 648 F.Supp. 450 (D. Colo. 1986); (arbitration was mandatory even though arbitration clause used the term "may.")

<sup>10</sup> In re Ricoh Corp. holds that the burden is on the party opposing venue in a forum designated in a forum selection clause to persuade the court that enforcing the forum selection clause would be sufficiently inconvenient to the parties to justify retention of the matter in a forum other than the chosen forum. Id., 870 F.2d at 573-74. To do so, the party opposing venue in the designated forum must show either fraud, duress, misrepresentation or intervening and unexpected occurrences following the contract's formation that would lead to frustration of the contract's purpose were the forum selection clause enforced. Id. at 574. That showing cannot be made in this case.

Intermedia made a choice of forum when it signed the Interconnection Agreement, submitted it for approval by various state PSCs, and failed to challenge those decisions. Intermedia cannot now ignore this obligation. As such, venue is inappropriate in this Court and the case should be dismissed.<sup>11</sup>

### **III. INTERMEDIA'S CLAIMS RELATED TO THE JUNE 1998 AMENDMENT ARE BARRED BY THE FILED RATE DOCTRINE.**

Intermedia seeks, among other relief, an order from this Court "rescinding the [June 1998] Amendment and declaring that it is and always was null, void and lacking any legal effect." Compl., Prayer for Relief, p. 56. Thus, Intermedia asks this Court to set aside the June 1998 Amendment, retroactively. Because the effect of such an order would be to change the reciprocal compensation rate in the Agreement for the period from June 1998 to the date of the Court's order, Intermedia necessarily seeks to recover the difference between the reciprocal compensation rates that have been in place for that period and the reciprocal compensation rates Intermedia believes should have been in place for that same period. This is a classic example of the type of claim foreclosed by the filed rate doctrine, which bars collateral attacks on a regulated entity's rates. See AT&T v. Central Office Tel., Inc., 524 U.S. 214, 222, 118 S.Ct. 1956, 1965 (1998).

Under the filed rate doctrine, a customer of a regulated utility is entitled to pay no more or less than the filed or tariffed rate. Keogh v. Chicago & Northwestern Ry., 260 U.S. 156, 163 43 S. Ct. 47, 49 (1922), ("Unless and until suspended or set aside, th[e] [tariffed] rate is made,

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<sup>11</sup> Even if the clear venue/forum selection provisions did not exist, this Court nonetheless should dismiss the action. In Burford v. Sun Oil Co., 319 U.S. 315, 63 S. Ct. 1098 (1943), the Supreme Court stated that a federal court may refrain from the exercise of jurisdiction where the exercise of that jurisdiction might prejudice the state's interest implementing a coherent regulatory scheme. It is not possible to segregate Intermedia's allegations of violations of the Telecommunications Act and the Communications Act of 1934 from the state regulatory issues which underlie Intermedia's causes of



for all purposes, the legal rate . . . . The rights as defined by the tariff cannot be varied or enlarged by either contract or tort . . . .”). Therefore, the filed rate doctrine “bars suits against regulated utilities grounded on the allegation that the rates charged by the utility are unreasonable.” Wegoland Ltd. v. NYNEX Corp., 27 F.3d 17, 18 (2d Cir. 1994).

“[A]ny ‘filed rate’ -- that is, one approved by the governing regulatory agency -- is per se reasonable and unassailable in judicial proceedings brought by ratepayers.” Id. Montana-Dakota Utils. Co. v. Northwestern Public Service Co., 341 U.S. 246, 252, 71 S. Ct. 692, 695, 95 L. Ed. 912 (1951)(“[T]he right to a reasonable rate is the right to the rate which the [administrative agency files or fixes”). Even allegations of fraud or conspiracy are insufficient to avoid dismissal of claims subject to the filed rate doctrine. Id. 341 U.S. at 254-55, 71 S. Ct. at 696-97; see also Square D Co. v. Niagra Frontier Tariff Bureau, Inc., 476 U.S. 409, 106 S. Ct. 1922 (1986) (allegations of antitrust conspiracy could not overcome filed rate doctrine); Wegoland, supra, 27 F.3d at 20-22 (no fraud exception to the ‘filed rate doctrine’); Taffet v. Southern Co., 967 F.2d 1483 (11<sup>th</sup> Cir.), cert. denied, 506 U.S. 1021 (1992) (allegations that utility violated RICO insufficient to prevent dismissal based on filed rate doctrine).

Here, the parties submitted the Agreement to the state PSCs, who, consistent with 47 U.S.C. § 252(e), approved the Agreement only after determining that (1) the Agreement did not discriminate against any other telecommunications carrier and (2) implementation of the Agreement was in the public interest. The June 1998 Amendment was submitted to, and approved by, the state PSCs using the same standards. Pursuant to regulations adopted by the FCC, any other CLEC may obtain local interconnection from BellSouth using the rates set forth in the June 1998 Amendment. 47 C.F.R. § 51.809. As a wholesale customer or BellSouth’s

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action. This Court should abstain in deference to the state regulatory agencies that have been empowered by state and federal law to consider issues related to interconnection.

services, Intermedia is entitled to pay no more or less than the rates set forth in the Agreement (and any amendments) as filed with and approved by the state PSCs. Therefore, the application of the filed rate doctrine to the rates set forth in the June 1998 Amendment is appropriate.

Applying that doctrine to the facts of this case, it is clear that Intermedia is not entitled to mount a collateral attack on the June 1998 Amendment. The allegations of breach of contract, antitrust, fraud or tortious interference are not sufficient to overcome the filed rate doctrine. See e.g., Central Office Tel. Inc., 524 U.S. at 226 (breach and tortious interference); Square D Co., 476 U.S. 409 (antitrust); Wegoland, 27 F.3d at 20-22 (fraud). If Intermedia was dissatisfied with the state PSC determinations which approved the June 1998 Amendment, then its recourse was to appeal the PSC orders under 47 U.S.C. § 252(e)(6). Moreover, to the extent that Intermedia merely seeks to challenge BellSouth's interpretation of the June 1998 Amendment, that dispute is already pending before four PSCs. See note 8, supra.

#### **IV. INTERMEDIA CANNOT ALLEGE A CLAIM FOR TORTIOUS INTERFERENCE.**

Intermedia's claims for tortious interference (Count VII and Count VIII) are defective and must be dismissed. Intermedia's tactic of recasting its breach of contract claim as tortious interference is squarely rejected by controlling case authority.<sup>12</sup> The elements for a claim of tortious interference are: (1) that the defendant acted improperly and without privilege, (2) that the defendant acted purposefully and with malice with the intent to injure, (3) which induced a third party or parties not to enter into or continue a business relationship with the plaintiff, and (4) the plaintiff suffered some financial injury. St. Mary's Hosp. of Athens, Inc. v. Radiology

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<sup>12</sup> Pursuant to a choice of law provision in the Interconnection Agreement between the parties (Section XXVI), "the Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Georgia. . . ."

Profit Corp., 421 S.E.2d 731, 735 (Ga. Ct. App. 1992). Intermedia's claim does not satisfy these pleading requirements and should be dismissed.

The failure to perform under a contract cannot give rise to a tortious interference claim. For example, addressing a claim much like Intermedia's, the court in St. Mary's Hospital held that a hospital's breach of its agreement with a radiologist, which impaired his ability to fulfill contracts with third-parties, did not state a claim for tortious interference. To the contrary, the element of inducement requires a claimant like Intermedia to prove a direct inducement of the third party. Thus, Intermedia must show:

that the defendant directly induced adverse behavior by the third party with respect to the third party's contract with the claimant, not merely that the defendant breached its contract with the claimant and that an element of damage resulting from that breach was the impairment of the claimant's performance of its contract with the third party.

St. Mary's Hosp., 421 S.E.2d at 735; see Intern. Tel. Exchange Corp. v. MCI, 892 F. Supp. 1520, 1543 n. 19. (no claim for tortious interference exists based on damages to contract or business relations due to breach of contract); see also Sandifer v. Long Investors, Inc., 440 S.E.2d 479, 760 (Ga. Ct. App. 1994)(denying claim for tortious interference based on alleged breach of lease agreement in absence of any evidence of direct inducement). To accept Intermedia's claim would be to expand tortious interference beyond its accepted boundaries -- any alleged failure to perform could be converted to an interference claim merely by showing that the breach had consequential effects on third party relationships. Georgia courts have wisely rejected this theory. For the foregoing reasons, Count VII should be dismissed.

## **V. INTERMEDIA HAS FAILED TO PLEAD FRAUD WITH PARTICULARITY.**

Intermedia's allegations of fraud (Counts I and V) fail to state a claim. A party may not convert a breach of contract claim into a fraud claim merely by alleging the breach was intentional or fraudulent. Lane v. Corbitt Cypress Co., 215 Ga. App. 388, 389, 450 S.E.2d 855, 857 (1994). Intermedia has also failed to tender any benefits under either the Agreement or the June 1998 amendment as required to bring a claim for rescission under Georgia law. Kobatake v. E.I. du Point de Nemours and Co., 162 F.3d 619, 625 (11<sup>th</sup> Cir. 1998). Further, Intermedia's allegations fall far short of the particularity required by Fed. R. Civ. P. 9(b). In Brooks v. Blue Cross and Blue Shield of Florida, Inc., 116 F.3d 1364, 1371 (11<sup>th</sup> Cir. 1997), the court wrote:

Rule 9(b) may be satisfied if the complaint sets forth:

- (1) precisely what statements were made in what documents or oral representations or what omissions were made, and
- (2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) same, and
- (3) the content of such statements and the manner in which they misled the plaintiff, and
- (4) what the defendants "obtained as a consequence of the fraud."

(Citations omitted, emphasis added.) Intermedia has not identified what specific statements BellSouth representatives allegedly made, who at BellSouth allegedly misled Intermedia, the time and place of such alleged representations, or how Intermedia was misled. The allegations of fraud are due to be dismissed, subject to amendment made, if at all, only after careful consideration. Intermedia has not complied with Fed. R. Civ. P. 9.

## **CONCLUSION**

The overriding consideration in this case is: should this Court decide complex regulatory and policy issues in the context of a dispute between two carriers when the same underlying issues are being considered by state and federal administrative agencies which have been tasked

specifically by Congress with that responsibility? BellSouth respectfully submits that this Court should decline Intermedia's invitation to assume that role. For the foregoing reasons, the matter should be dismissed.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

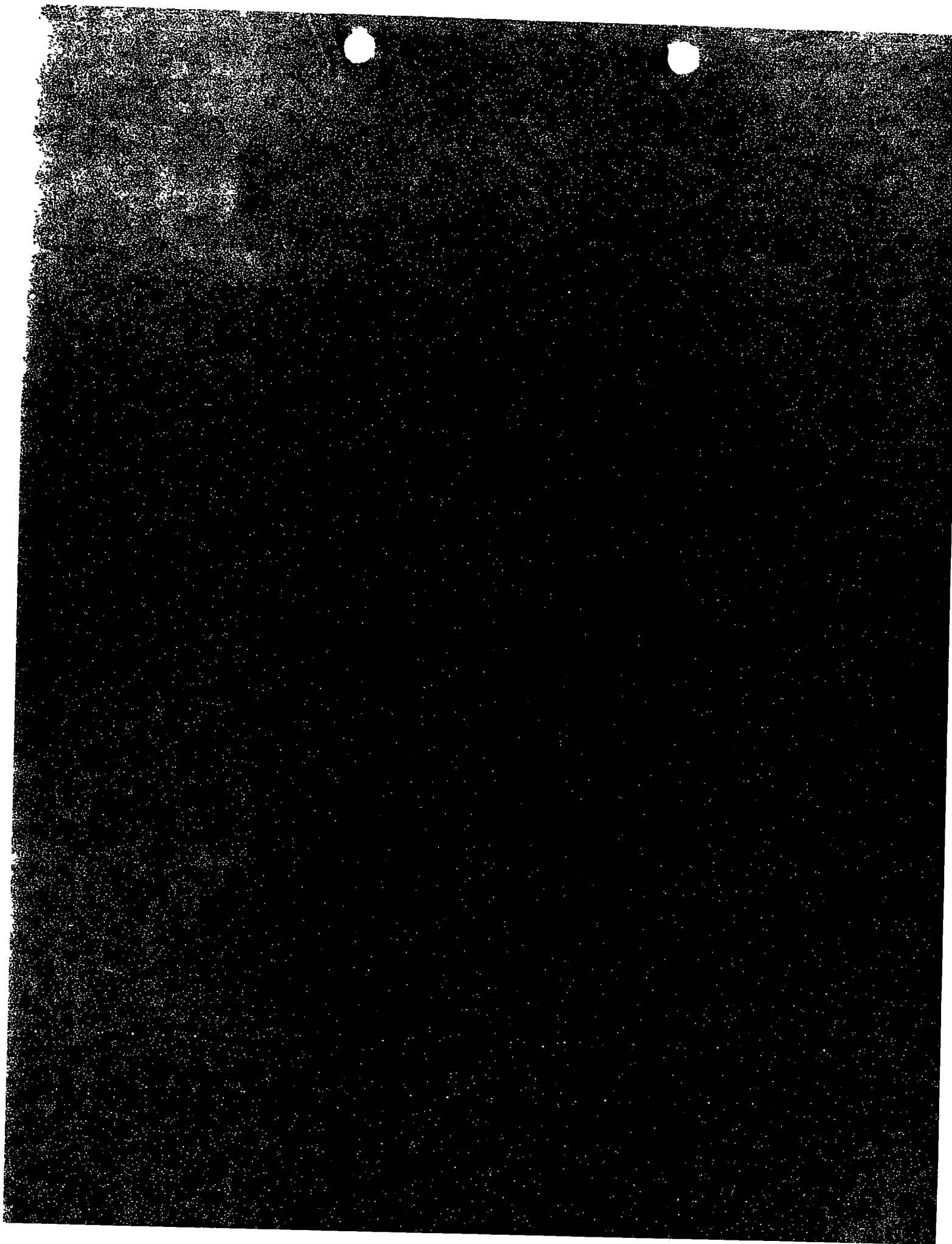
I HEREBY CERTIFY that, on this 15<sup>th</sup> day of August, 2000, a copy of the foregoing Memorandum in Support of Motion to Dismiss was served, by U.S. Mail delivery, upon the following counsel of record: **David T. Knight, Esq., and Troy A. Fuhrman, Esq., Hill, Ward & Henderson, Post Office Box 2231, Tampa, Florida 33601; Johnathan Canis, Esq., Douglas P. Lobel, Esq., Joseph F. Yenouskas, Esq., and Andrew M. Klein, Esq., Kelley Drye & Warren, LLP, 1200 19<sup>th</sup> Street, N.W., Suite 500, Washington, D.C. 20036; and Scott Sapperstein, Esq., Senior Policy Counsel, Intermedia Communications, Inc., 3625 Queen Palm Drive, Tampa, FL 33619.**



Attorney

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

INTERMEDIA  
COMMUNICATIONS INC.,

Plaintiff,

vs.

Case No. 8:00 -CV-1410-T-26C

BELLSOUTH  
TELECOMMUNICATIONS INC.,

Defendant.

**BELLSOUTH'S MOTION TO DISMISS**

Defendant, BellSouth Telecommunications Inc. ("BellSouth"), moves, pursuant to Rules 12(b)(1), (3), and (6) of the Federal Rules of Civil Procedure, to dismiss all counts of the Complaint filed by plaintiff Intermedia Communications Inc. ("Intermedia"). In support of this motion, BellSouth states:

1. Intermedia's claims do not belong in this Court. Its collection of state and federal claims are all inextricably tied to BellSouth's alleged non-performance of its obligations under the Telecommunications Act of 1996. As described below and in BellSouth's accompanying memorandum of law, such claims, to the extent they may be raised at all, must be raised before the state public service commissions ("PSCs") charged with the responsibility for implementing, supervising and enforcing the Act.

2. Intermedia fails to state claims for violations of federal antitrust law (Counts IX, X and XI). Intermedia's claims that BellSouth violated the Telecommunications Act cannot support a federal antitrust claim in any jurisdiction. By bringing a traditional antitrust claim, Intermedia would have this Court, in contradiction to existing case law, simply brush aside the



elaborate system mandated by Congress to promote and develop competition in the local telecommunications market. In addition, to the extent Intermedia bases its antitrust claims on BellSouth's exercise of its constitutional right to seek review of adverse rulings on highly contested issues involving reciprocal compensation, such claims are barred by the Noerr Pennington doctrine. Intermedia's claims based on the June 3, 1998 Amendment are an improper attempt to challenge a tariff approved by various state PSCs and are therefore barred by the filed rate doctrine.

3. The balance of Intermedia's state and federal claims (Counts I through IX) must be dismissed for lack of subject matter jurisdiction. The Telecommunications Act grants exclusive initial jurisdiction over the implementation and enforcement of the Telecommunications Act to the state PSCs and the Federal Communications Commission (the "FCC"). Alleged violations of the Act, regardless what label Intermedia applies to its claim, must first be submitted to the appropriate regulatory authority. Even if exclusive jurisdiction did not exist, this Court should defer to the state PSCs or the FCC under the doctrine of primary jurisdiction.

4. This Court should also decline to exercise its jurisdiction pursuant to the forum selection clause in the interconnection agreement between BellSouth and Intermedia. That Agreement clearly contemplates that disputes between the parties must first be heard before the appropriate state PSCs.

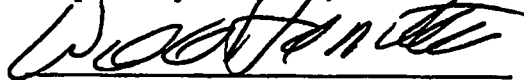
5. Intermedia's claims (Count V) related to the rates charged under the June 1998 Amendment are barred by the filed rate doctrine.

6. Intermedia's fraud claims (Counts I and V) must be dismissed for failure to state a claim. Intermedia has failed to plead fraud with particularity as required by Rule 9(b) Federal Rules of Civil Procedure.

7. Intermedia's tortious interference claims (Counts VII and VIII) fail to state a claim. Intermedia cannot recast its contract claim into tortious interference claims by suggesting that BellSouth's alleged breach impaired Intermedia's ability to fulfill contracts with third parties. Intermedia has failed to plead a direct inducement of a third party as required by applicable law.

ACCORDINGLY, Defendant, BellSouth Telecommunications Inc., respectfully requests that this Court enter an Order dismissing all counts of the Complaint.

Respectfully submitted,



William F. Hamilton

Fla. Bar No. 379875

Steven L. Brannock

Fla. Bar No. 319651

G. Calvin Hayes

Fla. Bar No. 558702

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Post Office Box 1288

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(813) 227-8500

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Attorney for Defendant,  
BellSouth Telecommunications, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss was furnished by U.S. Mail to **David T. Knight, Esq., and Troy A. Fuhrman, Esq., Hill, Ward & Henderson, Post Office Box 2231, Tampa, Florida 33601; Johnathan Canis, Esq., Douglas P. Lobel, Esq., Joseph F. Yenouskas, Esq., and Andrew M. Klein, Esq., Kelley Drye & Warren, LLP, 1200 19<sup>th</sup> Street, N.W., Suite 500, Washington, D.C. 20036; and Scott Sapperstein, Esq., Senior Policy Counsel, Intermedia Communications, Inc., 3625 Queen Palm Drive, Tampa, FL 33619, this 15<sup>th</sup> day of August, 2000.**

  
Attorney

TPA1 #1063605 v1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 99-1706-CIV-SEITZ

MAGISTRATE JUDGE GARBER

SUPRA TELECOMMUNICATIONS &  
INFORMATION SYSTEMS, INC.,  
a Florida Corporation,

Plaintiff,

v.

BELLSOUTH  
TELECOMMUNICATIONS, INC.,  
a Georgia Corporation,

Defendant.

**THIRD AMENDED COMPLAINT  
AND DEMAND FOR JURY TRIAL**

Plaintiff, SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra Telecom"), by and through its undersigned counsel and pursuant to this Court's Order of July 26, 2001, hereby files this its Third Amended Complaint suing the Defendant, BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth"), on the following causes of action and in support thereof states as follows:

**I. JURISDICTION AND VENUE**

1. Supra Telecom is a Florida corporation which is authorized to conduct business in the state of Florida and which during all times relevant to this Amended Complaint had its principal place of business in Miami-Dade County, Florida. During all times relevant to this action, Supra Telecom engaged in intrastate and interstate commerce.

2. The Defendant is a Georgia corporation having its principal place of business in Georgia. BellSouth engages in and conducts extensive intrastate and interstate business and commerce in the United States and within this district. BellSouth has a substantial presence and numerous business offices both within this state and this district. Whenever any reference is made in this pleading to "Defendant" or "BellSouth", that reference includes any predecessors, successors, parents, subsidiaries, affiliates and divisions of BellSouth as the context requires.

3. The causes of action alleged in this Amended Complaint arise under this Court's diversity jurisdiction, and in particular, under 28 U.S.C. §§1331 and 1332.

4. The causes of action alleged in this Amended Complaint seek damages in excess of \$75,000 exclusive of interest and attorneys fees and arose and accrued in the Southern District of Florida. Venue of these claims is proper in this district under 28 U.S.C. §1391(a), (b) and (c). In addition, the unlawful acts, conduct, practices, and behavior were, in part, implemented, carried out, effectuated, and performed within the Southern District of Florida.

## **II. NATURE OF THE TRADE AND COMMERCE**

### **A. Background Information And Definitions**

5. Telephone service can be broken down into long-distance telephone service and local telephone service. In the industry, local telephone service is referred to as local exchange service; while long distance telephone service is referred to as exchange access. Local exchange service is characterized by telephone calls within certain geographic areas known as LATAs (an acronym for "Local Access and Transport Areas"). Long distance telephone calls are telephone calls between LATAs (otherwise known as interLATA calls), while local telephone calls are telephone calls

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within the same LATA (otherwise known as intraLATA calls).

6. Historically, local exchange service was been provided by one company which had been granted a monopoly within a geographic area over the provisioning of such service. The company which traditionally provided service within a specified geographic area is commonly referred to as the Incumbent Local Exchange Carrier ("ILEC"). Companies which provide long-distance telephone service are referred to as Inter-Exchange Carriers ("IXCs").

7. The Defendant is a wholly owned subsidiary of BellSouth Corporation. BellSouth Corporation was incorporated on December 31, 1983 pursuant to the Modified Final Judgment. On January 1, 1984, AT&T transferred to BellSouth Corporation, all of the assets of two of its RBOCs, South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company. The Defendant is the surviving corporation from a merger of those two RBOCs.

8. Traditionally and historically, telecommunications companies had been granted franchised areas and monopoly rights within those geographic areas of responsibility. A LEC or ILEC's geographic area of responsibility and historic monopoly power is often referred to as the company's "service area". As part of the AT&T divestiture, BellSouth acquired monopoly service areas within the states of Florida, Georgia, Alabama, Mississippi, South Carolina, North Carolina, Tennessee, Kentucky and Louisiana.

9. Within the state of Florida, BellSouth is the monopoly service provider of local wireline telecommunications service in at least the following counties: Miami-Dade, Broward, Palm Beach, Monroe, St. Lucie, Indian River, Brevard, Orange, Seminole, Hernando, Volusia, Flagler, Putnam, St. Johns, Duval, Clay, Alachua, Gilchrist, Levy, Dixie, Columbia, Washington, Bay and Santa

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Rosa. These counties represent all of the east coast and many of the populated areas throughout the state of Florida, including the metropolitan areas of Greater Miami, the Florida Keys, Greater Fort Lauderdale, Greater West Palm Beach, Greater Orlando, Greater Jacksonville, Greater Gainesville, Greater Panama City and Greater Pensacola. In most of these areas, BellSouth services more than eighty to ninety percent (80-90%) of the total access lines.

10. Outside of the state of Florida, BellSouth is also the monopoly service provider of local wireline telecommunications service within the BellSouth service areas in the following states: Georgia, Alabama, South Carolina, North Carolina, Tennessee, Kentucky, Mississippi and Louisiana. Within BellSouth's service areas in these states, in 1998, BellSouth served more than ninety percent (90%) of the total access lines.

11. Throughout BellSouth's service areas, BellSouth owns virtually all of the local public switched network, and has a monopoly on the local public switched network and all corresponding local exchange facilities and exchange access facilities. As of December 31, 1998, BellSouth's local public switched network accessed approximately 24.1 million telephone lines within its service areas, divided approximately per each state as follows: (a) Alabama - 1,947,000 access lines; (b) Florida - 6,487,000 access lines; (c) Georgia - 4,143,000 access lines; (d) Kentucky - 1,207,000 access lines; (e) Louisiana - 2,418,000 access lines; (f) Mississippi - 1,296,000 access lines; (g) North Carolina - 2,452,000 access lines; (h) South Carolina - 1,471,000 access lines; and (i) Tennessee - 2,684,000 access lines.

12. Substantially all intraLATA and interLATA wireline telephone calls in BellSouth service areas are transmitted or handled by BellSouth using its local public switched network. Any

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competitor seeking to provide local wireline telecommunications services must have access to the local public switched network and its network elements in order to provide telecommunications service and compete in the local exchange market. BellSouth's local public switched network and its network elements are essential facilities to the provision of telecommunications services with BellSouth's service areas.

**B. The Telecommunications Act And Unbundling Requirements**

13. In 1934, the United States Congress sought to regulate the telephone monopolies by passing the Communications Act of 1934. The Communications Act created the Federal Communications Commission ("FCC"). In 1996, Congress sought to deregulate and bring competition to the local exchange markets, and thus amended the Communications Act of 1934, in what is commonly referred to as the Telecommunications Act of 1996, 47 U.S.C. § 151, et seq. (the "Act"). The primary intent of the Act was to encourage the development of Competitive Local Exchange Carriers ("CLECs"), also known as Alternative Exchange Carriers ("ALECs"). The Act envisioned ALECs being able to provide competitive service to local exchange consumers; much in the same way competition exists today in the sale of long-distance telecommunications services.

14. The Act imposed certain duties upon LECs and ILECs designed to open the local markets by requiring LECs and ILECs to share and give access to the existing local public switched network and its comprising network elements. Part of these duties include: (a) the duty to interconnect directly or indirectly the facilities and equipment of telecommunications carriers; (b) the duty not to prohibit or impose unreasonable or discriminatory conditions on the resale of telecommunications services; (c) the duty to permit competing carriers nondiscriminatory access to



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telephone numbers, operator services, directory assistance and directory listing; (d) the duty to negotiate interconnection agreements in good faith; (e) the duty to provide interconnection with an ILEC's network, at any feasible point, under terms and conditions that are just, reasonable and nondiscriminatory; (f) the duty to provide to any telecommunications carrier, nondiscriminatory access to unbundled network elements at any technically feasible point on rates, terms, and conditions that are just, reasonable and nondiscriminatory; and (g) the duty to provide physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the LEC.

15. With respect to unbundled network elements (UNEs), the Act defines network elements as a facility or equipment used in the provision of a telecommunications service; including features, functions and capabilities of any facility or equipment, databases, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. Under the Act, UNEs are not merely pieces of hardware which directly provide telecommunications service to end-users, but also include any system, service, software, information or data which makes its possible to operate a telecommunications business. The FCC has identified numerous network elements which LECs must unbundle and make available to ALECs on a non-discriminatory basis, including: (a) local loops and sub-loops; (b) network interface devices; (c) switching capability; (d) interoffice transmission facilities; (e) signaling and call-related databases; (f) operator services and directory assistance; (g) operations support systems; and (h) high frequency portions of the loop.

16. The local loop is defined as the transmission facility between the LEC's wire

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facility/central office, and the demarcation point at the customer's premises. The local loop connects the end-users' telephone equipment to the local public switched network. The local loop can be connected to either an ALEC's switch or the switching UNE.

17. Switching capability is generally defined as the function of routing or directing an end-user's call from the central office end of the local loop through the local public switched network and to the designation called. If the designation called is outside of the originating LATA, the call will be handled from the LEC to and IXC for further routing to the final destination. Switching capability includes all of the electrical and software functions of the switching equipment. The combination of a local loop with a switch port recreates local telephone service.

18. Interoffice transmission facilities are defined as all LEC transmission facilities between LEC wire centers/central offices. The combination of the local loop, switch port and interoffice transport allows for the recreation of local telephone service from an end-user to an IXC's point on interconnection with the local public switched network. Thus allowing for a complete recreation of local telephone service without any direct involvement between the end-user and the LEC.

19. Signaling networks are parallel networks that allow for the setup and breakdown of telephone calls and the particular physical paths to be taken by telephone calls. Signaling networks are a part of unbundled switching, however, may be obtained separately for direct connection to an ALEC switch which is not owned by the LEC. Call-related databases are defined as databases (other than operations support systems) that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service.

20. Operations Support Systems ("OSS") are defined as systems and functions consisting of

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pre-ordering, ordering, provisioning, maintenance and repair, and billing, supported by an ILEC's databases and information. Pre-ordering functions include such things as verifying customers' service, location and other information needed to place and order service. Ordering functions include such functions as placing orders and providing conversion dates for customers. Provisioning functions include actually providing the customer on-site service on a timely basis without delays or service interruptions. Maintenance and repair functions include the functions and services of maintaining and repairing an end-users' telephone service; including any inside wire maintenance service.

21. The functions, services, information, databases, equipment and devices set forth in (and defined by) paragraphs 15 through 20, above, are network elements which under the Act, BellSouth was, and is, obligated to provide to ALECs, including Supra Telecom, on a non-discriminatory basis and in parity to that which BellSouth provides itself. Each of these functions, services, information, databases, equipment and devices are commonly referred to as UNEs.

22. Pursuant to the Act, an ILEC, including BellSouth, is required to provide UNEs in a manner that allows ALECs to combine such elements to provide telecommunications service. When UNEs are combined to form a telecommunications service, the combinations are often referred to as "UNE Combos".

23. The UNEs referenced in paragraphs 15 through 20 are, within the BellSouth service areas, essential facilities under which Supra Telecom and other ALECs must have non-discriminatory access in order to provide telecommunications services in competition with BellSouth. It would be impossible and too cost prohibitive to duplicate the existing telephone

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network in order to provide wireline facilities-based competition. The above-referenced UNEs are essential and necessary parts of the existing telephone network which every ALEC needs access to in order to provided wireline telecommunications service, including facilities-based telecommunications service. Supra Telecom cannot practically or reasonably duplicate most (if not all) of these BellSouth essential facilities and network elements.

24. The Act envisioned ALECs being able to obtain access and use of essential network elements as UNEs, while at the same time provide telecommunications services through three methods: (a) resale; (b) UNE Combos; and (c) a combination of UNEs obtained from the ILEC and interconnected with equipment owned by an ALEC.

25. Under the Act, resale costs are calculated as a wholesale rate determined by excluding that portion of a LEC's costs attributable to any marketing, billing, collection and other costs avoided by reselling the service. However, the cost of UNEs is based upon the cost of providing the interconnection or network element.

26. When providing telecommunications service, the resale environment and UNE environment are conceptually different. In the resale environment, the ILEC is viewed as a wholesaler and the ALEC as a reseller. In the UNE environment, the ILEC is viewed as a lessor of network elements and the ALEC the lessee. Thus when providing telecommunications service through either UNE Combos, or a combination of ILEC UNEs and ALEC equipment, the ALEC is considered to be facilities-based service provider.

C. Events Giving Rise to Supra's Claims

27. Supra Telecom is a Miami-based ALEC, certificated and authorized to provide

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telecommunications services in numerous states throughout the United States. With respect to those states within BellSouth's service area, as of mid-1999, Supra Telecom was certificated and authorized to provide intraLATA and/or interLATA telecommunication services in the states of Florida, Georgia, Mississippi and Kentucky. Supra Telecom was first certificated in the state of Florida in May 1997, and thereafter was authorized to provided both intraLATA and interLATA telecommunications services within Florida.

28. Although resale of telecommunications service is the easiest way to become a telecommunications provider, resale of services is not a practical method of competing against an ILEC, as the resale discount is only reflective of the cost of billing and administratively serving the customer. Thus, in order to simply make a profit, an ALEC must be more efficient than the ILEC in marketing, billing and collection; functions in which an ILEC already has an advantage due to economies of scale. Moreover, ALECs must offer end-users a sufficient discount in order to entice end-users to switch providers. For the most part, resale is only a practical method of providing telecommunications service to large business end-users that purchase thousands of dollars of service each month.

29. By statutory definition, the cost of UNEs includes less items of cost than resale service. In this regard, the Act allows an ALEC to acquire UNE Combos which recreate resale service, but at a reduced cost. Moreover, since service through UNE Combos is considered to be facilities-based service, an ALEC providing service through UNE Combos is entitled to collect various access charges allowed by the FCC to facilities-based carriers. These access charges are levied upon both the end-users and the IXC's that the end-users use for interLATA service. Additionally,

as a facilities-based carrier, an ALEC is entitled to charge the ILEC for reciprocal use of the ALEC's network, whether all or part of that network is either leased from the ILEC or owned outright by the ALEC. Accordingly, providing facilities-based service is far more profitable to an ALEC than resale service.

30. From the beginning, Supra Telecom's business plan was to primarily compete in the residential market and the small business market, where there is a perceived, complete lack of competition. In order to provide service in these markets and still earn a reasonable profit, a service provider must be able to provide facilities-based service (either through UNE Combos or a combination of UNEs with ALEC equipment). Although resale is not a practical method of competing in these markets, it does provide an ALEC the experience necessary to operate a telephone company, and thus is viewed as a first step towards providing facilities-based service.

31. In the summer of 1997, Supra Telecom began reselling BellSouth telecommunications services, primarily in South Florida. Supra Telecom intended to build a customer base using the resale environment, while at the same time creating a business model to provide facilities-based service. That business model envisioned first providing service through the use of UNE Combos, and then ultimately through a combination of UNEs together with Supra Telecom equipment collocated within BellSouth central offices. A facilities-based model would be able to serve the residential market through attractive consumer discounts, which would generate new customers, while still being able to maintain an acceptable profit margin and reasonable rate of return. If roll-out in Florida was successful, Supra Telecom intended to duplicate this strategy in other states in which it was authorized to provide telecommunications services.

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32. In furtherance of the above stated goals, Supra Telecom sought to enter into an interconnection agreement with BellSouth which would grant Supra Telecom access to the UNEs and UNE Combos identified in paragraphs 15 through 20, above, together with access to other essential facilities necessary to provide telecommunications services.

33. On or about September 1997, and pursuant to the Act, Supra Telecom made a request upon BellSouth to enter into an interconnection agreement for all of the states in which BellSouth is an ILEC. In response to this request, BellSouth proceeded to provide Supra Telecom a copy of a proposed interconnection agreement for Supra Telecom's review. The proposed interconnection agreement was a form agreement and did not specifically mention Supra Telecom, but rather only made reference to "ALEC-1" as the relevant party entering into the agreement.

34. The entry of a proposed agreement was required by the Act. The expressed purpose of the proposed agreement was to "enable [Supra Telecom] to provide competing telephone exchange service to residential and business subscribers within the territory of BellSouth."

35. Paragraph 4 of the General Terms and Conditions (Part A) of the proposed interconnection agreement stated as follows:

The services and service provisioning that BellSouth provides [Supra Telecom] for resale will be at least equal in quality to that provided to BellSouth, or any BellSouth subsidiary, affiliate or end user. In connection with resale, BellSouth will provide [Supra Telecom] with pre-ordering, ordering, maintenance and trouble reporting, and daily usage data functionality that will enable [Supra Telecom] to provide equivalent levels of customer service to their local exchange customers as BellSouth provides to its own end users. BellSouth shall also provide [Supra Telecom] with unbundled network elements, and access to those elements, that is at least in quality to that which BellSouth provides BellSouth, or any BellSouth subsidiary, affiliate or other ALEC. BellSouth will provide number portability to [Supra Telecom] and their customers with minimum impairment of functionality, quality, reliability and

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convenience.

This provision made it clear that even if Supra Telecom was providing telecommunications service through resale, that Supra Telecom would still be entitled to obtain unbundled access to OSS UNEs in parity to that which BellSouth made such OSS UNEs available to itself. The provision also made it clear that Supra Telecom would be given access to all of the UNEs recognized by law, including those UNEs described in paragraphs 15 through 20 above.

36. Paragraph 7.1 of the General Terms and Conditions (Part A) of the proposed interconnection agreement stated as follows:

BellSouth shall take financial responsibility for its own actions in causing, or its lack of action in preventing, unbillable or uncollectible [Supra Telecom] revenues.

This provision made it clear that BellSouth would be responsible to Supra Telecom for any conduct on BellSouth's part that caused Supra Telecom to lose revenues.

37. Paragraph 1.1.1 of Attachment 2 of the proposed interconnection agreement stated as follows:

BellSouth shall, upon request of [Supra Telecom], and to the extent technically feasible, provide to [Supra Telecom] access to its unbundled elements for the provision of [Supra Telecom's] telecommunications service; and

Correspondingly, paragraph 2 of Attachment 2 of the proposed interconnection agreement, made it clear that BellSouth would provide Supra Telecom UNE Combos for at least the following UNE product combinations: (i) 2-Wire Analog Loop with 2-Wire Analog Port (Residential and Business); (ii) 2-Wire Analog Loop with 2-Wire Analog Port (PBX); and (iii) 2-Wire Analog Loop with 2-Wire DID or 4-Wire DID.

38. In general, Attachment 2 of the proposed interconnection agreement provided that



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BellSouth would make available to Supra Telecom the following UNEs: (i) local loops; (ii) integrated digital loop carriers; (iii) network interface devices; (iv) loop concentrators; (v) network terminating wires; (vi) subloops and subloop concentrators; (vii) local switching; (viii) transport (shared and dedicated); (ix) tandem switching; (x) digital cross-connects; (xi) operator systems; (xii) directory assistance; (xiii) signaling; (xiv) signaling transfer points; (xv) various databases; (xvi) dark fiber; and (xvii) 911 services.

39. Paragraph 6 of Attachment 3 of the proposed interconnection agreement stated as follows:

BellSouth shall provide interconnection ordering and provisioning services to [Supra Telecom] that are equal to the ordering and provisioning services BellSouth provides to itself.

This provision made it clear that BellSouth would provide Supra Telecom parity in the ordering and provisioning portions of the OSS UNE, even when Supra Telecom was seeking to obtain telecommunications services through UNEs that directly provide telecommunications service to end-users.

40. Paragraph 1 of Attachment 5 of the proposed interconnection agreement stated as follows:

BellSouth will ensure that [Supra Telecom], whether facilities-based or reseller, has nondiscriminatory access to telephone numbers for assignment to their customers under the same terms that BellSouth has access to telephone numbers.

Additionally, paragraph 3 of Attachment 5 of the proposed interconnection agreement required BellSouth to provide Supra Telecom and its customers, remote call forwarding services as part of local number portability. Under the Act, ILECs, such as BellSouth, have an obligation to provide

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local number portability and non-discriminatory access to telephone numbers, irrespective of how service is actually being provided to the end-user. These provisions were intended to memorialize BellSouth's obligations in this regard.

41. Paragraph 2.4 of Attachment 6 also required BellSouth to provide parity in obtaining repair services, irrespective of how the service was being provided to customer. Under the Act, maintenance and repair services are portions of the OSS UNE which must be unbundled and made available to ALECs, such as Supra Telecom, on a non-discriminatory basis and in parity to that which BellSouth provides itself. Accordingly, paragraph 2.4 of Attachment 6 was an attempt to memorialize this unbundling obligation.

42. Paragraph 1.1 of Attachment 7 of the proposed interconnection agreement stated as follows:

BellSouth shall also provide Supra Telecom billing through the Carrier Access Billing Systems (or "CABS" billing).

Under the Act, billing functions are portions of the OSS UNE which must be unbundled and made available to ALECs, such as Supra Telecom, on a non-discriminatory basis and in parity to that which BellSouth provides itself. CABS billing is an industry standard billing format which provides detailed call records. Detailed call records are needed by ALECs, including Supra Telecom, to properly bill end-users, irrespective of how the end-users are being provided telecommunications service. If an ALEC is unable to properly bill its end-user customers, that ALEC will have difficulty providing telecommunications services. This provision was intended to memorialize BellSouth's OSS UNE unbundling obligations.

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43. Finally, Attachment 11 of the proposed interconnection agreement provided rates for UNEs in the state of Florida, including the loop and switch port UNEs previously identified in Attachment 2 of the proposed interconnection agreement. Other attachments to the proposed interconnection agreement provide UNE rates for other states within the BellSouth region.

44. For the most part, the above cited provisions in the proposed interconnection agreement, directly or indirectly arose from statutory and FCC regulatory provisions and/or obligations of the Act.

45. As noted previously, the proposed agreement contained various provisions regarding access to, pricing of, and recombination of UNEs. The proposed agreement permitted Supra Telecom to purchase combined network elements, including a combination of the local loop together with a switching port, which combination would have in essence permitted Supra Telecom to recreate BellSouth telecommunications services. Providing service through the use of UNEs has several advantages over resale under certain circumstances. First, it can cost less than resale because UNEs are to be priced at cost, as opposed to resale, which is priced at wholesale rates. Second, service through UNEs can be simpler because the switching port comes with all of the vertical features of the switch (such as call waiting, caller ID, etc.); thus all ports come with full features and can be sold as such without the necessity of charging the consumer a premium for these features.

46. Notwithstanding the proposed agreement, the issue of UNEs had been in dispute and had been challenged by the RBOCs and others. At this time, the FCC had issued rules permitting the purchase of combined UNEs, but those rules had been challenged before the United States Court

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of Appeals for the Eighth Circuit. On or about October 14, 1997, the Eighth Circuit Court of Appeals issued its opinion as Amended on Rehearing in the case of Iowa Utilities Board v. Federal Communications Commission, 120 F.3d 753 (8th Cir. 1997). That opinion arguably called into question whether or not an ILEC was obligated to provide combined UNEs. The United States Supreme Court has since reversed the Eight Circuit on this issue.

47. On or about October 20, 1997, Olukayode Ramos, as President and CEO of Supra Telecom, executed the proposed interconnection agreement sent to Supra Telecom and returned same back to BellSouth. On or about October 21, 1997, Patrick Finlen, the Interconnection Services Manager of BellSouth, advised Mr. Ramos that the proposed agreement was a draft and that Supra Telecom would have to execute a final version of the agreement, that BellSouth would revise to replace the words "ALEC" and "ALEC-1" with the words "Supra Telecommunication & Information Systems, Inc." and/or "Supra".

48. After Mr. Ramos advised Mr. Finlen that he was prepared to execute the proposed, final agreement, on the afternoon of October 21, 1997 Mr. Finlen sent Mr. Ramos, via e-mail, a copy of the revised agreement. Consistent with the prior telephone conversation, Mr. Finlen stated in his e-mail that the only revisions contained in the e-mail agreement were the substitutions of "ALEC-1" with "Supra Telecommunications and Information Systems, Inc." On or about that same day, Mr. Ramos printed the agreement from his computer. He then executed the agreement e-mailed to him (hereafter referred to as the "Interconnection Agreement") and returned same to BellSouth for execution. The Interconnection Agreement executed by Mr. Ramos was the same as the proposed interconnection agreement previously referenced, with the exception that the name of Supra

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Telecom was substituted for the word "ALEC-1". Thereafter, on or about October 31, 1997, Jerry Hendrix, as Director of Interconnection Services for BellSouth, executed the Interconnection Agreement. See **Supra Exhibit 1**.

49. Notwithstanding the fact that BellSouth and Supra Telecom had executed the Interconnection Agreement, BellSouth (through Mr. Finlen and/or others) removed the attachments and other pages which had accompanied the Interconnection Agreement and substituted pages that materially altered the Interconnection Agreement. (The agreement containing the altered attachments will hereafter be referred to as the "Altered Interconnection Agreement." See **Supra Exhibit 2**.) In support of its allegations of Fraud, Supra Telecom makes reference to the Award of the Tribunal in Consolidated Arbitrations, dated June 5, 2001, (the "Award"). The Award comprises the findings of commercial arbitrators from the parties' consolidated CPR arbitrations. While the arbitrators did not rule on the issues herein, the arbitrators did make findings of fact with respect to the parties' relationship from its inception to October 5, 1999, the effective date of the parties' interconnection agreement for which the arbitrators had jurisdiction. As such, the tribunal held with respect to Finlen's unilateral alterations that:

It is undisputed that, before the executed agreement was filed with the FPSC, Finlen compiled a different version with an Attachment 2 that deleted BellSouth's obligation to provide UNE Combos and a new signature page with mis-aligned paragraphs. It also cannot be disputed that the replaced Attachment 2 in Supra's agreement appeared only days after the Eighth Circuit Court of Appeals had ruled in *AT&T v. Iowa Utilities Board*, 124 F. 3d 934 (8<sup>th</sup> Cir. 1997) calling into question an ILEC's duty to provide UNE Combos to CLECs such as Supra.

See page 13 of the Award, attached hereto as **Supra Exhibit 3**.

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50. On or about November 24, 1997, BellSouth unilaterally filed the Altered Interconnection Agreement with the Florida Public Service Commission ("FPSC"), without Supra Telecom's knowledge of the material alterations. At about this time, BellSouth also unilaterally filed the Altered Interconnection Agreement in each of the other eight states within BellSouth's service area. In early 1998, Supra Telecom instituted arbitration proceedings before the FPSC, seeking to arbitrate rates referenced in the Interconnection Agreement. However, BellSouth improperly used the Altered Interconnection Agreement to terminate that proceeding, to the detriment of Supra. Throughout this time period, Supra Telecom was unaware of and was never informed by BellSouth of the material alterations to the Interconnection Agreement.

51. The most important difference between the Interconnection Agreement and the BellSouth Altered Interconnection Agreement was the deletion of provisions relating to UNE Combos. It is no coincidence that the alterations were made after BellSouth had become aware of the Iowa Utilities Board opinion relating to UNEs. Since the interconnection agreement was a document consisting of several hundred pages, Supra Telecom did not reasonably discover the alterations until a later point in time.

52. In early 1998, Supra Telecom began requesting the ability to service customers through UNE Combos. Written requests for UNE Combos were made in at least April, 1998 and June, 1998. On or about July 2, 1998, Marcus Cathey, as Senior Assistant Vice President of BellSouth, replied to Supra Telecom's requests stating that BellSouth had no contractual or statutory obligation to provide Supra Telecom UNE Combos. Moreover, that any future agreement to combine such elements would include charges not authorized by either the FCC or the FPSC. Thereafter, Supra

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Telecom investigated the matter and discovered that the Interconnection Agreement had been altered, and that BellSouth had filed the Altered Interconnection Agreement with each state Commission in BellSouth's service area.

53. When confronted with the evidence of the alterations, BellSouth admitted that the agreement filed did not reflect the parties' agreement and that Patrick Finlen had switched the agreements. BellSouth further stated that even if the provisions providing access to recombined UNEs were restored, that BellSouth would not provide such UNEs without payment of certain fees which the FCC ruled could not be charged and which the United States Supreme Court has recently affirmed. As a result of BellSouth's actions, Supra Telecom contends that the switching of documents was intentional and for the purpose of delaying Supra Telecom's ability to provision telecommunication services through the use of UNE Combos. Supra Telecom believes that BellSouth's actions in this matter were intentionally committed with the intent to harm Supra Telecom, analogous to the Arbitral Tribunal's finding in its Award with respect to the parties' relationship from its inception to June 5, 2001:

The evidence shows that BellSouth breached the Interconnection Agreement in material ways and did so with the tortious intent to harm Supra, an upstart and litigious competitor. The evidence of such tortious intent was extensive, including BellSouth's deliberate delay and lack of cooperation regarding UNE Combos, switching Attachment 2 to the Interconnection Agreement before it was filed with the FPSC, denying access to BellSouth's OSS and related databases, refusals to collocate any Supra equipment, and deliberately cutting-off LENS for three days in May 2000. (Emphasis added.)

Please see page 40 of the Award.

54. On or about August 1999, the parties executed and filed a correct version of the

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Interconnection Agreement, whose terms were the same as those set forth in the proposed interconnection agreement previously described, and with the only change being that the name of Supra Telecom replaced the word "ALEC-1" throughout the agreement. This correct version of the Interconnection Agreement was dated as being effective October 23, 1997, and continuing for two (2) years thereafter. (This corrected version will hereafter be referred to as the "Corrected Interconnection Agreement.")

55. BellSouth's actions in refusing to provide Supra Telecom telecommunications service through a combination of the loop and switch port UNEs is a violation of not only the Corrected Interconnection Agreement, but also the Act (as interpreted by the FCC and various federal courts).

56. In addition to the above, despite the Corrected Interconnection Agreement and the Act, BellSouth failed to provide Supra Telecom parity and equal access to the OSS UNE. Pursuant to the Corrected Interconnection Agreement and the Act, BellSouth was obligated to unbundled certain OSS functions, including pre-ordering, ordering, provisioning, maintenance and repair, and billing, supported by BellSouth's databases and information. Although BellSouth made an attempt to unbundle these functions, the unbundled elements made available to Supra Telecom were greatly deficient and not in parity to that which BellSouth provided itself.

57. Some of the deficiencies in parity in the OSS UNEs made available to Supra Telecom and other ALECs, include, but are not limited to: (a) lack of a truly automated ordering and pre-ordering interface; (b) lack of any on-line edit checking capability; (c) lack of ability to reserve telephone numbers in parity with BellSouth; (d) lack of ability to reasonably correct ordering



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mistakes without the orders being dropped; (e) lack of parity in provisioning intervals; (f) lack of CABS billing and other necessary information necessary to properly bill end-users; (g) lack of ability to provide remote call forwarding; and (h) lack of parity in repair services.

58. This lack of parity in providing OSS UNE functions made it difficult for Supra Telecom to compete. In violation of the Act, the ordering systems, UNEs, provided to Supra were deficient and not in parity with the systems BellSouth made available to its own retail divisions. The ordering systems were structured in such a way that often denied Supra critical information necessary to complete the order and thus created unnecessary delays in switching customers and/or starting service. These delays ultimately reflected poorly on ALECs, including Supra Telecom, and often convinced customers to switch back to BellSouth.

59. BellSouth's billing functions, UNEs were was also poorly structured, treated Supra as the customer, and often effectively denied sufficient information from which Supra could accurately bill their customers; such as detailed call records and properly identified service codes. BellSouth also failed to provide Supra parity in the quantity of telephone numbers which could be reserved, thus ultimately requiring ALEC customers to wait unreasonable periods of time before they could have new telephone numbers assigned. The BellSouth system also would not provide Supra customers access to remote call forwarding, a feature available within the BellSouth network and which at times caused customers to switch back to BellSouth. Additionally, BellSouth often failed to provision and install service to Supra Telecom's customers within the same time periods in which BellSouth installs such service for its customers. Unreasonable delays in this area also caused customers to switch back to BellSouth.

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60. With respect to repairs, when Supra Telecom customers would call BellSouth repair centers, even though BellSouth was obligated to provide service levels equal to that which it provides its own customers, BellSouth would advise the Supra Telecom customer that it could not help them because they were not a BellSouth customer. BellSouth would use this vulnerability to solicit customers to switch back to BellSouth.

61. When repair representatives would appear at the customer premises, they would first identify themselves to Supra Telecom customers as being from BellSouth, and then would advise the customer that they would be billed for a service call since the customer was not a BellSouth customer. Moreover, BellSouth service representatives often delayed or outright refused to enter the premises of Supra Telecom's customers to correct the problem, thus creating even more bad will against Supra Telecom. These actions were not in parity to that portion of the OSS UNE that BellSouth makes available to itself.

62. In addition to the above, once orders were placed for customers to switch providers, BellSouth often immediately send the customer a retention letter seeking to re-solicit the customer to stay with BellSouth. Often the combination of a retention letter coupled with BellSouth's delay in installing or converting the service, caused customers to change heart and switch back to BellSouth before service could even start with Supra Telecom.

63. Supra Telecom has also sought to obtain technical information from BellSouth about BellSouth's network that was necessary for Supra Telecom to become a facilities-based carrier. Notwithstanding various Supra Telecom requests, BellSouth refused to reasonably provide Supra Telecom with such necessary information. Under the Act, BellSouth was obligated to provide this

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technical information to Supra Telecom as part of its unbundling obligations. Thus a failure to provide the requested information demonstrates a further lack of parity in providing UNEs to Supra Telecom.

64. For many of the reasons stated above, Supra Telecom lost numerous customers and had been unable to operate a sustainable telecommunications business. During the relevant time period of the Altered Interconnection Agreement and Current Interconnection Agreement, Supra Telecom's telecommunications business has only produced frustration and continual losses.

65. Moreover, BellSouth's tactics have delayed and prevented Supra Telecom, from competing in the telecommunications services market within BellSouth's service areas. Under the conditions described above, Supra Telecom could not earn a profit reselling telecommunications services to end-users. The only difference in provisioning service to Supra Telecom's customers via resale and via UNE Combos was the amount billed to Supra Telecom.

66. BellSouth's refusal to acknowledge service through UNE Combos was for all practical purposes, a refusal to bill at UNE Combo rates; thus deliberately making it unprofitable for Supra Telecom to provide telecommunications service. Because of this unprofitability, it made no sense for Supra Telecom to expand its business. Moreover, BellSouth's refusal to acknowledge UNE Combos prevented Supra Telecom from pursuing its business plans as well. Accordingly, BellSouth's conduct described above has had the real effect of delaying Supra Telecom's business for almost two years.

67. BellSouth's conduct and delay tactics have effectively denied Supra Telecom access to BellSouth's local public switched network and corresponding network elements.

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68. For many of the reasons stated above, Supra Telecom lost numerous customers and had been unable to operate a sustainable telecommunications business. During the relevant time periods of September 1997 through October 1999, Supra Telecom's telecommunications business has only produced frustration and continual losses.

69. Supra Telecom has either performed or has been excused from performing all obligations and conditions precedent prior to filing this action.

70. As a result of BellSouth's conduct, the Plaintiff Supra Telecom has had to retain and utilize the services of both in-house and outside counsel and has incurred and will continue to incur fees and expenses associated with such counsel for their services.

### **III. CAUSES OF ACTION**

#### **Count I - Fraud**

71. Supra Telecom realleges and incorporates by reference paragraphs 1 through 70, as if fully set forth herein.

72. As set forth hereinabove, the Defendant, through its managing agents, had agreed to enter into an interconnection agreement with Supra Telecom that provided for, inter alia, the ability to purchase UNE Combos. After Supra Telecom executed the Interconnection Agreement, BellSouth intentionally replaced pages in the document that resulted in the deletion, inter alia, of Supra Telecom's ability to acquire UNE Combos. Although BellSouth had executed the Interconnection Agreement, BellSouth altered the document in such a manner so that it no longer reflected the parties' understandings and agreements. BellSouth then filed this altered document with the FPSC and the public service commissions of each of the other eight states within

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BellSouth's service area.

73. Additionally, the Defendant, through its managing agents, misrepresented to Supra Telecom that the interconnection agreement provided for execution was the same agreement entered into between BellSouth and AT&T. The BellSouth/AT&T Agreement also provided for the provisioning of service through the use of UNE Combos.

74. In early 1998, Supra Telecom requested UNE Combos from BellSouth. BellSouth denied the request contending that it had no contractual or statutory duty to provide the UNE Combos. The United States Supreme Court has since ruled that the Act does require BellSouth and other ILECs to provide UNE Combos. Moreover, BellSouth has subsequently conceded that the document filed with the nine public service commissions was not the agreement that the parties had executed and/or intended to execute. Thus, BellSouth's actions have successfully thwarted and delayed Supra Telecom's efforts to provide telecommunications service through UNE Combos.

75. Based upon the above, the Defendant provided Supra Telecom a proposed agreement which BellSouth had represented to Supra Telecom was agreeable to BellSouth and that BellSouth would execute after Supra Telecom had executed and returned same to BellSouth. Nevertheless, after BellSouth received executed copies of the agreement, it altered the document with the intent of deceiving Supra Telecom and, thus, backing out of its previous representations. BellSouth's alterations resulted in the removal of material provisions from the document; provisions that Supra Telecom relied upon being included. BellSouth did not even advise Supra Telecom of BellSouth's alterations. Additionally, BellSouth never intended to abide by many of the key provisions of the Interconnection Agreement, thereby effectively thwarting Supra Telecom's ability to provide

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telecommunication services in competition with BellSouth.

76. BellSouth's actions in altering the executed Interconnection Agreement, in filing those Altered Interconnection Agreements with the various public service commissions, and in never intending to abide by key provisions of the Interconnection Agreement constitute material misrepresentations, which were relied upon by Supra Telecom and which caused Supra Telecom substantial damage and injury. Such actions also constitute an intentional fraud in the execution of the Interconnection Agreement and upon the relevant Commissions themselves. Moreover, shortly after filing the altered document with the FPSC, BellSouth used the altered document to terminate a proceeding instituted by Supra Telecom before that Commission; a proceeding that sought to arbitrate rates referenced in the Interconnection Agreement.

77. Additionally, BellSouth's actions in misrepresenting that the Interconnection Agreement was the same agreement entered into between BellSouth and AT&T also constituted material misrepresentations, which were relied upon by Supra Telecom and which caused Supra Telecom substantial damage and injury.

78. BellSouth's actions in representing to Supra Telecom that it would execute the Interconnection Agreement provided and signed by Supra Telecom and abide by same, and thereafter altering the document to remove material provisions, were committed negligently, recklessly and/or deliberately with the intent of inducing Supra Telecom into acting in justifiable reliance thereof.

79. Likewise, BellSouth's actions in misrepresenting that the Interconnection Agreement was the same agreement entered into between BellSouth and AT&T, were committed negligently,

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recklessly and/or deliberately with the intent of inducing Supra Telecom into acting in justifiable reliance thereof.

80. BellSouth's actions constitute false representations and/or statements of fact. BellSouth made these various false statements knowing that such representations were untrue, reckless and/or that BellSouth never intended to carry out its representations to Supra Telecom. Thereafter, BellSouth attempted to hide this fraudulent conduct from Supra Telecom.

81. Supra Telecom justifiably relied on these material misrepresentations and/or omissions to its detriment and has suffered damages as a result of BellSouth's misconduct. Supra Telecom's damages include, but are not limited to: (a) the delay suffered in not being able to provide telecommunications service as planned; (b) costs associated with attempting to remove the altered agreement from the public filings before the nine public service commissions; (c) costs associated with the arbitration proceeding dismissed because of the filed altered document together with any lost opportunity which that proceeding might have brought; and (d) loss of profits associated with not being able to provide the planned services.

82. BellSouth's fraudulent actions were committed intentionally, willfully, and/or with reckless and wanton disregard for the rights of Supra Telecom.

WHEREFORE, Plaintiff, SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., demands judgment against the Defendant, BELL SOUTH TELECOMMUNICATIONS, INC., for compensatory and consequential damages, punitive damages, pre-judgment interest, costs, attorneys' fees pursuant to Fla.Stat. § 57.105 and such other and further relief as the Court deems fair and just.

Case No.: 99-1706-Civ-Setz**Count II - Tortious Interference**

83. Supra Telecom realleges and incorporates by reference paragraphs 1 through 70, as if fully set forth herein.

84. Supra Telecom had business relationships with various end-users of telecommunications services. Such relationships were evidenced by enforceable contracts and/or by agreements terminable at will. In any event, Supra Telecom had an expectation of continuing business from these relationships.

85. The Defendant knew of these business relationships and intentionally set out to destroy the same by using improper and unjustified methods of competition previously set forth in the body of this Amended Complaint. These improper business methods included, but were not limited to, BellSouth's solicitation of Supra Telecom's new customers before the customers had even switched over to Supra Telecom and the manner in which BellSouth dealt with Supra Telecom's customers, particularly in repair situations when customers are most vulnerable. BellSouth's conduct was improper and unjustified.

86. The Defendant intentionally acted in this tortious manner for the purpose of destroying Supra Telecom's business relationships. BellSouth's unjustified and intentional interference with the business relationships of Supra Telecom has caused Supra Telecom to lose actual and potential business.

87. The actions of the Defendant: (1) were improper and without privilege; (2) were purposeful and/or with malice; (3) caused and induced third parties not to enter into or continue business relationships with Supra Telecom; and (4) caused Supra Telecom to suffer financial injury.



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88. Supra Telecom has suffered direct and consequential damages equal to loss in its business, lost goodwill, lost business opportunity and corresponding lost profits due to the tortious interference of BellSouth. BellSouth's interference was malicious and committed with reckless and wanton disregard for the rights of Supra Telecom.

WHEREFORE, Plaintiff, SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., demands judgment against the Defendant, BELL SOUTH TELECOMMUNICATIONS, INC., for compensatory and consequential damages, punitive damages, pre-judgment interest, costs, attorneys' fees pursuant to Fla.Stat. § 57.105 and such other and further relief as the Court deems fair and just.

**IV. DEMAND FOR JURY TRIAL**

Supra Telecom hereby demands a trial by jury on all issues so triable.

Respectfully Submitted,

**SUPRA TELECOMMUNICATIONS  
& INFORMATION SYSTEMS, INC.**  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, Florida 33133  
Telephone: 305.476.4248  
Facsimile: 305.443.1078

By: 

**BRIAN CHAIKEN**

Florida Bar No. 0118060

Case No.: 99-1706-Civ-Setz

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail on ELICIA BLACKWELL, ESQ., 150 West Flagler Street, Suite 1910, Miami, Florida 33131, T. MICHAEL TWOMEY, ESQ., BellSouth Telecommunications, Inc., 675 West Peachtree Street, N.E., Suite 4300, Atlanta, Georgia 30375-0001 and EDWARD H. BERGIN, ESQ., Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P., 201 St. Charles Avenue, 49th Floor, New Orleans, Louisiana 70170-5100, this 20<sup>th</sup> day of August, 2001.

**SUPRA TELECOMMUNICATIONS  
& INFORMATION SYSTEMS, INC.**  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, Florida 33133  
Telephone: 305.476.4248  
Facsimile: 305.443.1078

By: 

**BRIAN CHAIKEN**

Florida Bar No. 0118060

**BEFORE THE CPR INSTITUTE FOR  
DISPUTE RESOLUTION ARBITRAL TRIBUNAL**

<b>SUPRA TELECOMMUNICATIONS &amp; INFORMATION SYSTEMS, INC.,</b>  <b>Claimant,</b>  <b>V.</b>  <b>BELLSOUTH TELECOMMUNICATIONS, INC.,</b>  <b>Respondent</b>	<b>Filed: September 20, 2002</b>  <b>Arbitration V</b>
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**SECOND AMENDED ANTITRUST COMPLAINT**

Claimant Supra Telecommunications & Information Systems, Inc. ("Supra"), in accordance with the Tribunal's Order of September 11, 2002, hereby files its Second Amended Complaint, and in support thereof states as follows:

**I. GENERAL STATEMENT OF SUPRA'S CLAIMS**

1. This is an arbitration seeking damages for violations of the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.* From the beginning of the parties' relationship, respondent BellSouth Telecommunications, Inc. ("BellSouth") has engaged in a pattern of anti-competitive practices and conduct designed to prevent Supra from acquiring customers, growing its business and implementing its business plan in order to preserve BellSouth's monopoly position in the wireline voice telecommunications market in Florida, without any legitimate business justification. As a result of BellSouth's actions, competition for local telephone services in the relevant market has been reduced, consumers have been

denied an effective choice of local telephone services provider, and Supra has been substantially injured in its business and property.

2. BellSouth holds a long-standing, well-recognized monopoly over local telecommunications in many geographic markets in various states, including Florida. The cornerstone of this monopoly is BellSouth's control over essential facilities for competition in local telecommunications – the comprehensive network of switches, lines and other telecommunications facilities that connect every telephone in its local service areas to all other served by BellSouth and other local telecommunications networks and telephones served by BellSouth and other local telecommunications facilities and networks.

3. Supra is a relatively new competitive entrant in the local telephone business, having begun service in Florida in response to the landmark Telecommunication Act of 1996 (the "1996 Act"), 47 U.S.C. § 151 *et seq.*, which for the first time removed all legal impediments to local telephone competition. It is BellSouth's response to Supra's competitive entry, and BellSouth's fear that Supra's success would erode BellSouth's monopoly power, that have given rise to the present dispute.

4. Because it is impossible economically to replicate the local networks controlled by BellSouth and other monopoly local telephone companies (referred as incumbent local exchange carriers, or "ILECs"), competitors such as Supra require access to the BellSouth local network in order to compete in the provision of local telephone services. BellSouth has used its monopoly control over the local telecommunications network to deny Supra access to facilities essential to competition, to raise Supra's costs and to increase barriers to entry in the market for local telephone services. BellSouth has also been able to use its market power in local telecommunications voice and non-voice

service to reacquire and retain customers in a way that competitors lacking such market power cannot do, for example, through monopolistic pricing parties and improper use of wholesale customer and carrier information that BellSouth has access to only because of its market dominance. BellSouth has taken these predatory and exclusionary actions in order to prevent Supra from successfully entering the market in BellSouth's territory, making it impossible for Supra to provide telephone services to consumers. BellSouth has delayed, impeded, and undermined Supra's efforts to utilize BellSouth's network, as permitted by and required under the Interconnection Agreement between the parties. BellSouth's actions were specifically intended to and have had the effect of substantially foreclosing Supra from competing for local telephone service in BellSouth's monopoly local service areas.

5. In addition to the specific statutory, decisional and contractual provisions set forth herein, BellSouth's willful and intentional faith violations of the requirements and purposes of Sections 251 and 252 of the 1996 Act, as well as the Good Faith Performance requirements of Section 4 of the General Terms and Conditions of the Interconnection Agreement 2, are applicable to every claim set forth herein.

6. BellSouth's exclusionary, anticompetitive and unlawful activities have had a substantial adverse effect on Supra's ability to compete in the relevant markets. Supra has proven its ability to gain customers in BellSouth's markets by implementing its Business Plan. Today, Supra has over 300,000 customers in BellSouth operating territories in Florida alone. But for BellSouth's actions/inactions as set forth herein, Supra would have experienced a more explosive growth in BellSouth's operating territories. As a result of its conduct, BellSouth has maintained its local telephone

monopoly, has foreclosed competition for local and intraLATA long-distance services in the relevant geographic markets and has substantially injured Supra in its business and property.

## **II. PARTIES AND JURISDICTION**

7. Supra is a minority-owned alternative local exchange carrier incorporated in the state of Florida, lawfully doing business in 46 other states, with applications pending in 4 states. Supra is certified to provide telecommunications services in the state of Florida and 28 other states including Georgia, Kentucky and Mississippi with applications pending in 7 states. Supra's principal place of business in Florida is 2620 S.W. 27<sup>th</sup> Ave., Miami, Florida 33133.

8. BellSouth is an incumbent local exchange carrier as defined by Section 251(h) of the 1996 Act. BellSouth claims its principal place of business in the state of Florida to be 150 W. Flagler Street, Suite 1910, Miami, Florida 33130. BellSouth remains the monopoly provider of telecommunications services throughout its serving territory in Florida as well as in its serving territories of *Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee*. Furthermore, BellSouth has maintained its relationship with other ILECs – SBC, Verizon and Qwest/US West. Sometime in 1999, BellSouth purchased a 10% stake in Interexchange Carrier (IXC) Qwest. Other ongoing relationships with these ILECs include joint purchasing arrangements and frequent meetings.

9. Pleadings and process to be served upon Supra in this matter shall be served upon the following:

Brian Chaiken  
Adenet Medacier  
Paul D. Turner

Supra Telecommunications and Information Services, Inc.  
Legal Department  
2620 S.W. 27<sup>th</sup> Ave.  
Miami, Florida 33133  
Telephone: 305/476-4248  
Facsimile: 305/443-1078  
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and the Law Firm of  
Kelley Drye & Warren, LLP  
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Suite 500  
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10. Jurisdiction over this matter has already been decided and asserted by this Tribunal.

### **III. GEOGRAPHIC MARKETS, PRODUCTS AND SERVICES**

11. Telephone services can be broken down into long-distance and local telephone service. Local telephone service is referred to as local exchange service and is provided by local exchange carriers, or "LECs." Local exchange service comprises telephone calls within local service areas that are served by one or more central offices that are interconnected and consist of one or more so-called "exchanges." In addition to providing local telephone service, facilities-based LECs also originate and terminate calls for long-distance telephone companies, a service known as "exchange access" or "access." Long distance service, also known as interexchange or toll service, consists of calls that originate and terminate in different local service areas. Companies that provide long-distance telephone service are referred to as Interexchange Carriers ("IXCs"). Long distance services are provided on an intraLATA and interLATA basis, where a LATA is a Local Access

Transport Area. LATAs are geographic areas created in response to the break up of the former American Telephone and Telegraph Company ("AT&T") and were used to define and enforce certain restrictions on the provision of long distance services by the Regional Bell Operating Companies that resulted from that break-up.

12. Historically, for nearly 100 years, local exchange service was provided by one company that had been granted a monopoly within a geographic area over the provisioning of such service. These "incumbent" LECs (ILECs) enjoyed legal and economic protections against the entry of competitors and benefited from favorable tax, depreciation and related laws that permitted them to construct ubiquitous networks for which they were guaranteed a profit by ratepayers. Under traditional public utility regulation, ILECs were guaranteed a reasonable return on their investment and protected against competition.

13. BellSouth Telecommunications, Inc. ("BellSouth") is a wholly owned subsidiary of BellSouth Corporation. BellSouth Corporation was incorporated on December 31, 1983 pursuant to the Modified Final Judgment. On January 1, 1984, AT&T transferred to BellSouth Corporation, all of the assets of two of its Regional Bell Operating Companies ("RBOCs"), South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company. BellSouth is the surviving corporation from a merger of those two RBOCs.

14. An ILEC's geographic area of responsibility and historic monopoly power is often referred to as the company's "service area." As part of the AT&T divestiture, BellSouth acquired monopoly service areas within the states of Florida, Georgia, Alabama, Mississippi, South Carolina, North Carolina, Tennessee, Kentucky and Louisiana. Within



BellSouth's service areas in Florida, BellSouth serves more than ninety percent (90%) of the total access lines.

15. Substantially all intraLATA and interLATA wireline telephone calls in BellSouth's Florida service areas are transmitted or handled by BellSouth using its local public switched network. Any competitor seeking to provide local wireline telecommunications services must have access to the local public switched network and its network elements in order to provide telecommunications service and compete in the local exchange market. No entrant can economically duplicate the ubiquitous local telephone network controlled by BellSouth, financed for years by captive utility ratepayers. BellSouth's local network and its network elements -- the most significant of which are loops or access lines from subscribers' premises to the central offices, switching facilities located in the central offices, and BellSouth's interoffice transport trunks between central offices and space within those offices to access these elements ("co-location space") -- are therefore essential facilities to the provision of competitive local telecommunications services within BellSouth's monopoly service areas.

**A. Relevant Products and Geographic Markets**

**1. Telephone Services**

16. Wireline telecommunications service is separate and distinct from telegraph service; having different customers, different uses and different costs associated with these uses. Telegraph service is not a reasonable substitute for wireline telecommunications service. Furthermore, the bulk of transmissions carried by the public switched network are voice transmissions. Therefore, any wireline service, which only provides data transmission capability, is not a reasonable substitute for wireline telecommunications service, which has both voice and data capability. Likewise, wireline telecommunications service is separate

and distinct from wireless telephone service or other radio-based variants; having different uses and costs associated with these uses. Moreover, most wireless services do not provide the ability to transmit data over the connection, nor can wireless service provide multiple channels over the same connection as does digital wireline service. In short, wireless telecommunications service is not a reasonable substitute for wireline service. This is evident, because most wireless subscribers purchase wireline telecommunications service as well.

17. In addition to the above, wireline telecommunications end-users can be broken down into residential and business customers. This division of end-users is recognized by the industry, including BellSouth. In this regard, the industry generally recognizes differences in pricing between business and residential customers. Residential customers usually have fewer than five analog lines (usually one to three lines). Moreover, marketing strategies often differ between the two groups. Because of the differences in products, usage and/or pricing, a distinct separation in markets exists between residential and business end-users.

18. The business market can further be divided into small business and large business end-users. Small business generally orders analog lines (usually five or less), while large businesses usually have PBX systems and thus order digital lines. The cost difference between analog and digital lines is usually considerable. Small businesses using analog lines utilize standard telephone equipment, while large businesses using digital lines must purchase specialized telephone systems. Because of the differences in products, usage and/or pricing, a distinct separation in markets exists between small business and large business end-users.

19. LECs that provide these three products on a facilities-basis, residential retail service, small business service, and large business service, also offer exchange access service to interexchange carriers, as described above. Thus, the facilities used to provide these three sub-markets of local services are also used to provide a portion of intrastate and interstate long distance services.

20. Accordingly, the relevant product market is the provisioning and sale of wireline telecommunications service. This product market can further be broken down into three separate and distinct sub-markets: (a) residential; (b) small business; and (c) large business. As different customers, product offerings, prices and marketing strategies exist between these markets, these markets are and can be properly considered to be separate and distinct product sub-markets.

21. With respect to geographic markets, wireline telecommunications service traditionally developed around franchised territories in which one monopoly provider owned and operated the network. Although it was the intent of the Act to open up local markets to competition, minimal competition has emerged in territories serviced by the ILECs. Ownership of the local public switched network still rests in the hands of the ILECs. Because competition in one ILEC's service area does not bring competition or otherwise benefit consumers in the service area of another ILEC, it is proper and appropriate to define geographic market boundaries by ILEC service areas.

22. Moreover, state Commissions often regulate many aspects of the telecommunications industry within a particular state, thus creating differing market conditions within each state. Therefore consumers in each state are somewhat isolated from the market conditions in other states (irrespective of whether or not the same ILEC services

the same states). Accordingly, it is appropriate to further define geographic market boundaries along state lines.

23. For the reasons stated above, in this case, the relevant geographic market is the BellSouth services areas within Florida.

24. Within each of the above relevant geographic markets, BellSouth possesses both market-power and monopoly power in the market for wireline telecommunications service. At the end of 1998, BellSouth's statewide market share in Florida exceeded ninety-five percent (95%) of the total access lines. BellSouth possesses a dominant and controlling market share in its Florida service territory. Moreover, the local public switched networks in the relevant geographic area are primarily owned by BellSouth and are essential facilities necessary for the initiation and completion of telephone calls made from and to the relevant market (*i.e.*, BellSouth's service areas).

25. Notwithstanding the statutory right to resell telecommunications services, substantial barriers to entry exist in both the above referenced markets. Apart from the fact that the ILEC owns the local public switched network, other barriers to entry include, but are not limited to, the need to be certified in each state in which service will be provided, bonding and minimum capital requirements, and the need for considerable expertise in the fields of business, regulatory affairs and communications technology. Additionally, ILECs such as BellSouth had, and still have, inherent within the system, structural impediments which make it extremely difficult to compete effectively and at a profit.

26. In transmitting intraLATA or interLATA telephone calls in the relevant market, BellSouth engages in business that affects or is within the flow of interstate commerce, and the effect of that business on interstate commerce is substantial. BellSouth has operated and

continues to operate across state lines and so operated during the period of time relevant to this Counterclaim. The result of the market structure and the normal business activity of BellSouth is that: (a) telephone calls made from telephones in BellSouth's service area are processed by BellSouth and linked with IXCs for connection to recipients outside BellSouth's service area (and including outside the state of Florida); (b) data, information, correspondence and financial material are exchanged between BellSouth's operations in Florida and its principal offices in the State of Georgia; and (c) money flows to and from banks outside of the state of Florida and BellSouth's telephone operations and other business operations within the state of Florida.

## **2. Digital Subscriber Line ("DSL") Services**

27. DSL is a family of data services that provide one way high-speed data and voice transport with access of fifty (50) times the speed provided by telephone wires. A variety of affordable DSL services have been made available in recent years to customers due to the deployment of Advanced Data Services provisioned upon the already deployed RBOC networks, which carry traditional voice services. Such include but are not limited to Asymmetrical Digital Subscriber Line ("ADSL"), High Bit Rate Digital Subscriber Line ("HDSL") and Single Pair Symmetrical Services.

28. DSL, also referred to as Broadband Technology, is mostly available to consumers in urban areas. In rural markets, satellite and fixed wireless technologies are providing high-speed access to consumers otherwise not serviced by the cable modem and DSL providers.

29. In 2001, BellSouth nearly tripled its DSL customer base with 620,500 retail and wholesale customers, an increase of 189% over 2000 – the fastest growth of any DSL or cable provider in the country. BellSouth added nearly 158,000 customers in the fourth

quarter, a 34% sequential quarter growth rate. In 2001, BellSouth increased its coverage from 45% to 70% of households in the markets BellSouth serves – covering over 15.5 million lines. BellSouth's market position is a result of BellSouth's targeted market-driven deployment of DSL in more than 1,000 central offices and 8,700 remote terminals (RTs) – more RTs than any other DSL provider. BellSouth's network design provides broadband, at speeds of a megabit or more, to 90% of Supra's coverage area. The network design also enables BellSouth to deploy advanced equipment and services, achieving significant improvement in cost per line. For the second quarter of Year 2002, BellSouth boasts 803,000 customers, and is the leading DSL provider in its 9 state region

30. Cable Modem high-speed data is not a reasonable substitute for DSL for Supra as a CLEC, which provides local telephone service on an RBOC network that is ready and able to provide DSL service on 70% of its subscribers lines.

### **3. Operations Support Systems**

31. Operations Support Systems ("OSS") are databases or facilities used in the provision of a telecommunications service and are necessary for the delivery and exchange of installation, billing and other customer information between ILECs and competitors. The OSS systems are used to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair and billing. The Federal Communications Commission ("FCC") has held that ILECs are obligated to provide nondiscriminatory OSS access to competitors through their interconnection agreements. BellSouth has failed to provide Supra with nondiscriminatory access to BellSouth's OSS and, as a result, has made it impossible for Supra to order, install and utilize UNEs and other elements of BellSouth's monopoly local network.

32. BellSouth has made available to Supra an OSS system called Local Exchange Navigation System ("LENS"). LENS and the other BellSouth OSS interfaces used by competitors such as Supra fail to provide Supra with nondiscriminatory access to BellSouth's OSS. The LENS system and other BellSouth OSS interfaces used by competitors only accept Local Service Requests ("LSRs") instead of the Service Orders ("SOs") input by BellSouth and other ILECs for their own customers and services. BellSouth does not use, nor has it ever used, LENS for its own operations but instead uses a proprietary OSS system that is far superior in performance in terms of both efficiency and quality.

33. As a direct result of the difference in the types of submissions for pre-ordering and ordering of services, LENS and other BellSouth OSS interfaces used for competitors constantly clarify and/or reject Supra's LSRs for no reason, as a result of a BellSouth error or by design. This frustrates Supra's access to essential network facilities, delays the initiation of service to Supra's customers, artificially increases Supra's administrative and overhead costs, and substantially impedes Supra's ability to enter the market in competition with BellSouth.

34. In or around 2000 and during the pendency of a good faith billing dispute, BellSouth disconnected Supra's access to LENS, thereby precluding Supra from conducting any pre-ordering and ordering of services, despite Supra's right to same. These disconnections have exacerbated Supra's inability to access essential network facilities, service delays, cost increases, and the adverse impacts on Supra's ability to compete described above. More recently, on September 9, 2002, BellSouth again discontinued Supra's access to LENS.

**B. Interstate Commerce**

35. In transmitting local or long distance telephone calls in the relevant markets, BellSouth engages in business that affects or is within the flow of interstate commerce, and the effect of that business on interstate commerce is substantial. BellSouth has operated and continues to operate across state lines and so operated during the period of time relevant to this Complaint. The result of the market structure and the normal business activity of BellSouth is that: (a) telephone calls made from telephones in BellSouth's service area are processed by BellSouth and linked with IXCs for connection to recipients outside BellSouth's service areas (including outside the state of Florida); (b) data, information, correspondence and financial material are exchanged between BellSouth's operations in Florida and its principal offices in the State of Georgia and (c) money flows to and from banks outside of the state of Florida and BellSouth's telephone operations and other business operations within the state of Florida.

**IV. FACTUAL ALLEGATIONS**

**A. Predatory Pricing (Price Of Bellsouth Residential Basic Line Is Cheaper Than The Cost Of Elements)**

36. BellSouth has priced its basic telephone service below the purported cost of the elements which make up that service. For example, basic telephone service requires at a minimum, a loop and port. Although the port contains all of the features of the switch, through software BellSouth disconnects these features. However, the cost of the switch port is still the same, irrespective of whether or not the services are connected.

37. In leasing UNE Combos to Supra and other CLECs, BellSouth purportedly prices the cost of the loop and switch port at cost. However, BellSouth's price of basic service to consumers is lower than the combined wholesale price of the loop and switch port elements



offered to Supra and other CLECs. The only conclusion to be drawn here is that BellSouth has priced its basic service below cost.

38. Supra and other CLECs cannot compete using UNEs or UNE Combinations when basic service is being requested by the consumer, since it costs more for Supra to purchase the loop and switch port than BellSouth charges the consumer for the basic service.

39. BellSouth's actions amount to predatory pricing in that BellSouth is charging consumers less than its costs for the purpose of retaining these customers and maintaining its market share.

40. The end result is that Supra is forced to primarily offer full-service packages, which include all of the switch port features in order to compete with BellSouth. Conversely, Supra can only compete for those customers that want all of these features.

41. Supra has and continues to suffer damages as a result of BellSouth's predatory pricing of basic services.

42. The actions described above were intentionally and willfully undertaken by BellSouth as a result of its own private and voluntary business judgments, and were not the result of any governmental action. Moreover, BellSouth has no legitimate business justification for its actions.

**B. Bellsouth's Monopolistic Customer Reacquisition And Retention Programs ("Winback")**

43. BellSouth has implemented programs designed to deplete Supra of its current and potential customers under the labels "Winback," "Full Circle," and other similar programs. Said programs are run by BellSouth's retail divisions and are also outsourced to independent agents and contractors. These programs violate the antitrust laws in at least four ways: (1) some of them employ targeted price discounts or other customer incentives

which create a price squeeze for BellSouth's competitors; (2) the programs make illegal use of confidential wholesale customer information; and (3) BellSouth uses these programs to illegally disparage and defame Supra and its products and services; and (4) BellSouth locks customers into multi-year agreements which include termination fees and penalties which create an overwhelming economic disincentive to these customers should they consider obtaining service from a competitor.

**1. Price Squeeze**

44. BellSouth market dominance is not only reflected in its monopoly of the products that it is able to offer to consumers, but also BellSouth plays a major role in determining the prices that CLECs pay for purchasing inputs to competing CLEC services. To Supra, BellSouth is not only its main competition but also the sole vendor/wholesaler of voice services in BellSouth's service areas. The prices at which Supra purchases voice services from BellSouth are determined by the State Public Service Commission. According to the Act of 1996, ILECs must make available services and elements subject to pricing standards which take into account the ILEC's costs of provisioning the same elements and services to itself and its own customers.

45. Starting in 2001, BellSouth was successful in offering various promotions which targeted the CLECs' customers. These promotions are believed to cover several segments of the consumer market, including residential, small, and large businesses. These targeted price discounts and other economic incentives are used in conjunction with BellSouth's reacquisition and retention programs. BellSouth offers telephone services to existing or potential Supra customers at effectively lower rates than Supra is permitted to purchase the same services to offer to Supra customers. Because of these

discounts or effective discounts on the cost of retail telephone services and the relative cost of BellSouth's wholesale products, Supra cannot compete effectively.

46. For example, while Supra existing or potential customers can obtain a 20% discount from BellSouth to purchase telephone services, when they return to or stay with BellSouth under one of its promotions, Supra can only obtain a discount of 16.81% from BellSouth to purchase the same services and offer them to its customers. Practically, in those circumstances, Supra and other CLECs cannot successfully retain these targeted customers.

47. BellSouth prices many of its wholesale elements and services above its retail services, which constitutes a *per se* price squeeze. Even where BellSouth prices its promotional discounts, rebates, or other offerings above wholesale costs, its pricing takes advantage of different regulatory pricing calculations in order to pare the promotions down to the price point where the CLECs cannot match such offerings without losing money themselves, thereby perpetuating a price squeeze.

48. In view of these promotional incentives, CLECs can hardly retain or obtain customers, especially when coupled with BellSouth advertising campaigns, which focus on the CLECs' reliability, their customer service, their experience in the market, their life expectancy and other intangibles.

49. As a result of the foregoing anticompetitive behavior Supra suffered extensive damages, including lost revenues, and lost goodwill.

## **2. Misuse of Wholesale Information**

50. The key to BellSouth's promotions is its unique ability to utilize information acquired while the customer was a BellSouth customer or acquired due to BellSouth's singular position as a provider of vital wholesale imports to competitors services. A

customer who decides to switch from BellSouth to a CLEC will more than likely receive a Winback call or "we miss you" correspondence from, or on behalf of, BellSouth while the customer's order is being processed by BellSouth wholesale operations. It is not feasible for BellSouth to act so efficiently unless BellSouth uses the CLECs' LSRs as a trigger to initiate Winback and unless there is internal sharing of Customer Proprietary Network Information ("CPNI") and other competitor-specific information – obtained by BellSouth solely due to its role as an ILEC in providing loops and other essential facilities to CLEC competitors – between BellSouth's retail and wholesale divisions. All this is made possible because BellSouth also provisions CLECs' requests to convert BellSouth's customers.

51. The 1996 Act does not allow telecommunications carriers to use information obtained from another carrier for its own marketing purposes. 47 U.S.C. § 222(b) provides that:

A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

52. On or about 2001, BellSouth created various Winback Centers, Operations Support Systems and supporting databases that generates reports for its reacquisition and Winback operations. CARE, SIW, SUNRISE, and other BellSouth OSS feed directly into systems that generate reacquisition letters and "leads" for BellSouth's and outbound telemarketers' uses.

53. BellSouth is only able to successfully create this Winback operation because of its monopoly position and its use of wholesale information to screen, qualify and target special promotions and marketing directed to end user who decide to subscribe to services

from Supra and other CLECs. As a result of BellSouth's misuses of wholesale information and abuse of its monopoly power, Supra lost a large number of customers, and suffered damages.

54. All of the BellSouth's unlawful acts described above are designed to delay, hinder, suppress and obstruct the development of competition in the telecommunications markets by making it impossible for Supra and other CLECs to operate profitably, and in turn denying telecommunications consumers the benefits of competition as conceived by the Act.

55. BellSouth's anticompetitive tactics have successfully caused the loss of customers to Supra. BellSouth's ultimate goal is to erode Supra's customer base and cause its exit from the local telecommunications market.

56. BellSouth has the specific intent to maintain its monopoly status in the markets serviced by Supra. BellSouth's illegal and anti-competitive conduct has seriously harmed the ability of Supra to compete or enter into service areas dominated by BellSouth. As a result, BellSouth has hindered overall competition and reduced consumer choice in the market for local telecommunication services, preventing the lower prices, superior service, and the deployment of advanced telecommunications services envisioned by Congress, and supported by the FCC.

### **3. Defamation and Trade Disparagement**

57. BellSouth is using its monopoly power to disseminate disparaging statements about Supra. Despite BellSouth's unlawful and obstructive tactics, Supra has achieved some modest success in BellSouth South Florida territories. Supra has fought tooth and nail to gain 9.01% of the telephone markets from BellSouth in South Florida (area codes 305, 854, 786 and 561). BellSouth countered by engaging in a dilatory campaign de-

signed to defame Supra to its current and potential customers. Such activity in turn discourages customers from obtaining telephone and other services from Supra.

58. BellSouth's campaign has caused a large number of Supra customers to return to the service offered by BellSouth. First, BellSouth waives a "switchback" fee of \$40.00 to customers who agree to lodge a slamming complaint against Supra. Second, BellSouth's retail service representatives make disparaging statements about Supra to customers who call them to inquire about Supra or to complain about service outages or other problems, presumably caused by BellSouth's deceptive and underhanded practices. Instead of accepting responsibility for BellSouth's bad acts, these BellSouth representatives and/or agents tell the customers that "Supra is going out of business," "Supra is filing for bankruptcy," "Supra is illegal," or by making other similar statements.

59. Even BellSouth's repairmen and maintenance personnel have engaged in the unlawful practices of making disparaging statements about Supra. Upon contact with Supra's customers, they introduce BellSouth's incentive programs and make similar defamatory statements. Such statements made by BellSouth are false, defamatory, disparaging, denigrating, and have caused many customers to return to BellSouth.

60. To make matters worse, BellSouth has commenced a marketing campaign targeted at the reliability and dependability of Supra.

61. As a result of BellSouth's unlawful and willful defamatory remarks, Supra has suffered damages and lost numerous former and potential customers.

**C. DSL Tying and Exclusionary Practices**

62. BellSouth willfully and intentionally ties its DSL service to its own wireline services. BellSouth has the economic power to force customers in the relevant market to

**purchase BellSouth voice services, in lieu of Supra voice services, if the customers want, to maintain their BellSouth DSL service.**

**63. BellSouth enjoys a monopoly in the provision of DSL services in its service area in Florida. In Florida, BellSouth controls more than 75% of the DSL market. It markets its DSL services under the name FastAccess®. No other carrier owns data facilities or xDSL capable loops in locations where BellSouth provides telephone services. While there are various carriers that offer xDSL services in BellSouth's service area, they are for the most part reselling BellSouth's DSL services from BellSouth tariff. The reason is that the voice facilities owned by BellSouth are also able to provide xDSL services without the need for additional equipment or facilities. BellSouth seeks to maintain and increase its monopoly in this market by hindering the ability of carriers such as Supra to provide xDSL service, an advanced service, or to serve voice customers that desire DSL service. Specifically, BellSouth will not provide DSL service to CLECs' UNE or UNE platform (UNE-P) voice customers. BellSouth also strips DSL services from CLEC resale customers.**

**64. BellSouth's refusal to provide DSL to UNE-based Supra customers is in addition an exclusionary practice that artificially maintains BellSouth's voice monopoly by impeding the ability of voice CLECs to compete. BellSouth represents that it will permit CLECs to serve Bellsouth DSL customers if the CLECs utilize resale, but not UNE or UNE-P elements, to serve the end users. Despite repeated requests by Supra, BellSouth has steadfastly refused, without economic justification or regulatory compulsion, to provide UNE-based Supra customers with DSL service.**

65. The only rationale for this refusal, and its intended and actual effect, is to raise Supra's costs for entry into, and competition within, the voice services market. Since BellSouth illegally refuses to provide Supra's customers with DSL service, Supra must attempt to provide its customers with costlier alternatives, or lose customers in the voice services market.

66. Both BellSouth and Supra are involved in a "not insubstantial" amount of interstate commerce in the market of DSL service. Both BellSouth and Supra have an economic interest in DSL and voice services.

67. As a direct and proximate result of BellSouth's illegal arrangement, Supra has and will continue to suffer monetary damages and loss of goodwill.

**D. Over-Billing and Sham Litigation**

68. From the inception of the parties' relationship, BellSouth has continuously over-billed Supra. Supra has memorialized this pattern in various documents and has regularly contested BellSouth's bills. BellSouth's patented response is to deny Supra's request to lower the bills and unilaterally declare the invoices due without further investigation. It remains difficult to conceive why BellSouth is not able to issue an accurate invoice to Supra considering that BellSouth is at the cutting edge of technological advances and possesses the resources to man and equip its billing organization. Over the years BellSouth has not denied that it possesses the capacities to issue an accurate bill. However, BellSouth continues to insist that its inflated bills reflect the charges Supra agreed to in the interconnection Agreement, and in the different rates ordered by the FPSC. Because of BellSouth's position, Supra had to initiate and defend various lawsuits and arbitration proceedings involving BellSouth.



69. The major components of the judicial battles between Supra and BellSouth are BellSouth's refusal to bill Supra's for lease facilities at UNE rates, and BellSouth's refusal to provide the data necessary to collect revenues for BellSouth and Interexchange Carriers. On some occasions, BellSouth unreasonably insisted on invoicing Supra as a reseller even when the lines were provisioned as UNEs. This Tribunal previously found that BellSouth's bills and invoices from October 1999 cannot be trusted as BellSouth failed to apply the lower UNE rates, failed to provide Supra with Interexchange data that would allow Supra to bill and receive exchange revenues from Long Distance Carriers, failed to provide Supra with Operator Services / Directory Assistance and other branding functions, and failed to pay Supra reciprocal compensation for traffic exchanged with BellSouth. All of the foregoing actions are designed to increase Supra's costs of doing business.

70. In addition to BellSouth's unreasonable refusal to bill at UNE rates, BellSouth initiated various other baseless lawsuits against Supra. For instance, BellSouth's sister corporation, BellSouth Intellectual Property Corporation ("BIPCO"), initiated a lawsuit against Supra for violation of Trademark laws, over Supra's alleged misuse of BellSouth marks. BellSouth even requested that the Court enjoin Supra from any use of the BellSouth mark even in truthful comparative advertising. After initiation of the lawsuit, Supra offered to settle the case. Although BellSouth knew that it would not obtain more than Supra offered, BellSouth insisted on proceeding with the costly and time consuming litigation.

71. BellSouth further initiated a proceeding before the FPSC against Supra for Supra's alleged failure to properly report taxable revenues before the State of Florida. Un-

beknownst to BellSouth, Supra reported access revenues, which data BellSouth never provided, on an accrual basis and overpaid its taxes with the State of Florida. BellSouth later dismissed the case.

72. Most recently, BellSouth has filed two additional baseless proceedings. First, a contempt action against Supra for Supra's alleged use of confidential information in judicial proceedings. The second matter alleged Supra's unlawful use of LENS. Neither claim has any merit.

73. BellSouth's resolve is to keep Supra entangled in legal battles, which BellSouth knows will tremendously raise Supra's costs of doing business. While BellSouth has the resources to waste revenues on legal fees and take legal risks, Supra cannot absolve these costs and take such risks. So far, Supra and BellSouth have arbitrated seven (7) claims before this Tribunal and have five (5) claims pending in Federal Court; Supra has spent approximately \$1.5 million in legal fees due to BellSouth's unreasonable business practices toward Supra.

**E. Denial of Access to UNEs and UNE Combinations**

74. BellSouth has failed to provide Supra with access to UNEs and UNE Combinations. Consistent with Section 153(29) of the Communications Act of 1934, as amended by the Act, 47 U.S.C. § 153(29), the Agreement (Part B, page 33) defines "Network Element" as

a facility or equipment used in the provision of a Telecommunications Service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a Telecommunications Service.

75. The FCC's Rules specifically provide that, except upon request, an ILEC shall not separate requested network elements that the ILEC currently combines. 47 C.F.R. §

51.315(b). The Supreme Court has twice affirmed the legality of these regulations, most recently on May 13, 2002.

76. Since inception of the Agreement, Supra has sought to lease UNEs and UNE Combinations from BellSouth. Supra has made several written requests to BellSouth for the provision of UNEs, including access to loop qualification information. On or about December 12, 2000, BellSouth informed Supra by letter that, in its view, BellSouth had no contractual or statutory obligation to provide Supra with UNEs. Moreover, BellSouth stated that any future agreement to combine such elements would include additional charges. Such charges to combine elements are not authorized by the Agreement or by any FCC or FPSC regulation.

77. Despite Supra's efforts and intent to order UNEs and UNE Combinations, BellSouth has classified all of Supra's orders as resale and has refused to provide Supra the ability to submit orders for UNEs. BellSouth has taken the position that under the Agreement, UNEs are only available in a collocation environment. The FCC rejected this position in ¶ 329 of its First Report and Order (adopted August 1, 1996) on the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, (FCC Competition Order). BellSouth requested that Supra amend the Agreement, although the Agreement itself provides Supra the right to order UNEs and UNE Combinations. BellSouth refused this request.

78. Instead of supplying Supra with UNEs and UNE Combinations, BellSouth has provisioned Supra customers as "resale" customers. Under this arrangement, BellSouth is able to retain for itself substantial, competitively significant revenues from features and services that are only available to competitors providing service via UNEs or their own

network facilities. BellSouth's intentional refusal to provide Supra with UNEs was undertaken with the purpose and effect of (a) delaying Supra's ability to provision telecommunication services through the use of UNEs; (b) subverting the FPSC's ruling on non-recurring conversion costs, thereby charging ALECs additional, unwarranted amounts and creating an unnecessary barrier to entry; and (c) preventing Supra from being classified as a facilities-based provider via UNEs, entitled to, *inter alia*, access charges from long distance companies and other revenues not available to local service resellers.

79. Starting September 9, 1997 and June 22, 1998, Supra made several written requests to BellSouth for the provision of UNE Combos, including access to loop qualification information, pursuant to Section 1 and Part II of the General Terms and Conditions, Attachment 2 of the Interconnection Agreement 2, and 47 CFR Section 51.307. Supra renewed these requests during the contractual period of the 1999 Agreement pursuant to 47 CFR Section 51.307(a), entitled "Duty to provide access on an unbundled basis to network elements." That section provides:

An incumbent LEC shall provide, to a requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules.

80. In addition, the Act, the FCC rules, and the Interconnection Agreement 2 all require BellSouth to provide UNEs as discussed in greater detail herein below.

81. On or about June 25, 1998 and July 2, 1998, Mr. Marcus Cathey, as Senior Assistant Vice President of BellSouth, replied to Supra stating that BellSouth had no con-

tractual or statutory obligation to provide Supra with UNE Combos. Moreover, Mr. Cathey's letters stated that any future agreement to combine such elements would include charges not authorized by either the FCC or the FPSC. On August 3, 1998, Mr. David Nilson of Supra responded to Mr. Cathey's letter detailing specific contract language from section 2 of Supra's signed copy of the Interconnection agreement and to Florida Public Service Commission Order PSC-98-0810-FOF-TP which ordered that the UNE combinations must be provided, set modified rates for the non-recurring charges, and required BellSouth to perform the re-combinations. Telephone calls with Mr. Cathey at or around that time indicated that his section 2 was different than Supra's section 2. After requesting a copy of the agreement BellSouth filed, the alterations were suddenly obvious to Supra.

82. When confronted with the evidence of alteration and fraud, BellSouth admitted that the agreement filed did not reflect the parties' agreement. BellSouth further stated that *even if* the provisions providing access to recombined UNEs were restored, it would not provide such UNEs without payment of certain fees which the FCC and the FPSC had ruled could not be charged, such ruling having been recently affirmed by the United States Supreme Court, *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999). Despite BellSouth's claim that the switching of agreements was inadvertent and unintentional, Supra contends that the switching of agreements was intentional and for the purpose of (1) delaying Supra's ability to provision telecommunication services through the use of UNEs and UNE Combos pursuant to the parties' Interconnection Agreement, specifically Section 1 and Part II of the General Terms and Conditions as well as Attachment 2; (2) subverting the FPSC's ruling on non-recurring conversion costs, thereby charging

CLECs additional, unwarranted amounts and creating an unnecessary barrier to entry; and (3) preventing Supra from being classified as a facilities-based provider entitled to cost based products, access line charges from long distance companies, and EUCL charges, each one a substantial revenue source that Supra has been illegally deprived of. BellSouth was aware of the loss of this revenue to CLECs and fought a losing battle to retain these revenues from CLECs purchasing UNE combinations.

83. With respect to Supra's request for UNEs, Section 30.1 of the General Terms and Conditions requires BellSouth to "... offer Network Elements to [Supra] on an unbundled basis ..." additionally, Section 30.9 of the General Terms and Conditions not only indicates that the parties "... agree that the Network Elements identified in Attachment 2 are not exclusive ..." but also indicates that if "... BellSouth provides any Network Element that is not identified in this Agreement, to itself, to its own Customers, to a BellSouth affiliate or to any other entity, BellSouth will provide the same Network Element to [Supra]. ..." and pursuant to Section 30.10.4,

Unless otherwise designated by [Supra], each Network Element and the interconnections between Network Elements provided by BellSouth to [Supra] shall be made available to [Supra] on a priority basis that is equal to or better than the priorities that BellSouth provides to itself, BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element.

84. As such, BellSouth's refusal to provide UNEs that are specifically identified or currently available or provided to any other entity on a priority basis that is *equal to or better than* the priority to any other entity is a violation of not only the parties' Interconnection Agreements 1 and 2, but also the Communications Act as amended by the 1996 Act (as interpreted by the FCC, the FPSC and Supreme Court). Meanwhile, BellSouth continues to represent to the FCC that it provides UNEs and UNE Combos contained in

its contracts. In response to the FCC DA 99-532 released on March 17, 1999, BellSouth stated in part that:

Until such time that as the FCC adopts new definitions of unbundled network elements, BellSouth will continue to provide every unbundled network element in its contracts, which affords access to all those currently listed in Section 51.319 of the Commission's Rules.

85. Instead, BellSouth, until ordered to bill on a UNE basis by the Tribunal in a contract enforcement action, would only "provide" Supra wholesale services on a resale basis. It should be noted that the difference between a CLEC providing services via resale versus providing services via UNEs is merely a billing difference. Absolutely no physical changes are required to be made to the network in order to switch from resale to UNEs.

86. Loop qualification information allows a telephone service provider to know what types of services and features may be made available to a customer at a certain location. It is necessary in order to easily determine availability of advanced services, such as xDSL. Supra has made several written requests to BellSouth for loop qualification information as well as other information pertaining to central office records.

87. BellSouth's response to this request was to inform Supra that it has no statutory or contractual obligation to provide such information to Supra. With respect to BellSouth's position, Section 30.10.3.2 of the General Terms and Conditions requires BellSouth "... to work cooperatively with [Supra] to provide Network Elements that will meet [Supra's] needs in providing services to its Customers[,] and 47 CFR Section 51.307(e) requires that "... BellSouth shall provide to a requesting telecommunications carrier technical information about ... [BellSouth's] network facilities sufficient to allow the requesting carrier to achieve access to [UNEs]. ." As such, Supra has requested certain information

from BellSouth that will help Supra in identifying UNEs with respect to providing services to its customers, and BellSouth has refused to assist. Additionally, should these Network Elements be new or revised Network Elements, Section 30.9 requires BellSouth to “. . . notify [Supra] of the existence of and the technical characteristics of the new or revised Network Element.” In either event, BellSouth’s actions are violations of the Good Faith requirements of the Act and FCC rules as well as the Good Faith Performance requirements of Section 4 of the General Terms and Conditions.

88. BellSouth’s actions violate Section 2 of the Sherman Act. BellSouth’s refusal to allow Supra to provide UNE-P based services can only, and does have, the effect of raising Supra’s costs as a competitor of BellSouth’s, as well as slowing Supra’s expansion into the voice services market. In making this claim, Supra does not seek to duplicate *contract* damages recovered in prior arbitrations against BellSouth. Rather, Supra seeks those *antitrust* damages which are the result of BellSouth’s anticompetitive practices.

**F. Denial of Access to Other Essential Facilities (OSS and LENS)**

89. After passage of the Act of 1996, BellSouth created a business organization that dealt specifically with CLECs. That organization, the Local Carrier Service Center, was purportedly created to process CLECs’ service requests into BellSouth’s back-end Operation Systems. Under the guise of helping the CLECs, BellSouth through the LCSC successfully denied the CLECs access to facilities necessary to enter and success in the provision of local telecommunications service.

90. BellSouth has consistently denied Supra access to essential facilities by its failure to provide Supra with access to BellSouth’ networks and network elements, including but not limited to unbundled network elements, OSS, access to BellSouth Central Offices,



transport services, inter-exchange billing data and billing OSS, refusal to collocate Supra's switches and communication platforms. The foregoing systems, networks, elements, services and facilities are central to Supra's ability to provide local telecommunications and exchange services effectively, competitively and at a profit. The regulatory scheme of the telecommunications industry makes it incumbent upon the RBOCs to provide these elements and facilities on a non-discriminatory basis to Supra. The FCC made subsequent finding that denying CLECs, such as Supra, access to these essential functions constitutes barrier to entry, and hindrance to competition.

91. This Tribunal previously found that BellSouth was in violation of its obligations to provide such elements and facilities to Supra. As a direct result of BellSouth's anti-competitive refusal to allow Supra to operate as a facilities-based carrier and to provide Supra with non-discriminatory direct access to its OSS, inter alia, the Tribunal held that:

The evidence shows that BellSouth breached the Interconnection Agreement in material ways and did so with the tortious intent to harm Supra, an upstart and litigious competitor. The evidence of such tortious intent was extensive, including BellSouth's deliberate delay and lack of cooperation regarding UNE Combos, switching Attachment 2 to the Interconnection Agreement before it was filed with the FPSC, denying access to BellSouth's OSS and related databases, refusals to collocate any Supra equipment, and deliberately cutting-off LENS for three days in May 2000. (Emphasis added.) Please see page 40 of the June 5, 2001 Award.

92. From the inception of the parties' Agreement, Supra has and continues using LENS as the OSS to convert customers from BellSouth, and at the same time has requested other types of services from BellSouth, such as changes in features, addition to current account, and disconnection of features of services on the customers' account. LENS is not a true provisioning OSS, but is only a gateway to BellSouth's wholesale

OSS. BellSouth in turn provisions Supra's requests through its OSS and other legacy systems. As such, LENS is essential to Supra's ability to conduct business.

93. Starting in 1998 and continuing through the present, BellSouth regularly used LENS as an anticompetitive tool against Supra. Not only has BellSouth unreasonably denied Supra access to LENS without notice, in violation of the parties' agreement, BellSouth has also shut down LENS whenever there is a dispute between the parties over payment of invoices. BellSouth has shut down Supra's access to LENS on May 2000, and again on September and October 2000.

94. During the pendency of the parties' current billing dispute, BellSouth's Pat Finlen wrote a letter to Supra dated May 16, 2000 where BellSouth informed Supra that "as of May 16<sup>th</sup> BellSouth will no longer accept any orders for telecommunications services from Supra." That same day, BellSouth disconnected Supra's access to LENS in violation of Section 1.2 of the General Terms and Conditions which specifically states that "BellSouth shall not discontinue any Network Element, Ancillary Function, or Combination provided hereunder without the prior written consent of [Supra,]" and Section 16.1 of the General Terms and Conditions which specifically states that "[i]n no event shall the Parties permit the pendency of a Dispute to disrupt service to any [Supra] Customer contemplated by this Agreement[,]" as well as Attachment 1, Section 2.1 of the Interconnection Agreement 2 which specifically states that "[n]egotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between BellSouth and [Supra] arising under or related to this Agreement including its breach. . .", and Attachment 6, Section 14.1.3 which specifically states that "[i]f the [billing] dispute is not resolved within one hundred and fifty (150) days of the Bill Date, the dispute will

be resolved in accordance with the procedures set forth in the Section 16 of the General Terms and Conditions of this Agreement and Attachment 1.”

95. In response, Supra wrote to BellSouth a letter dated May 17, 2000. Thereafter, the parties held a conference call on May 18, 2000 to discuss the issues. BellSouth agreed that it was wrong and restored Supra’s access to LENS by the evening of that day. BellSouth’s willful disconnection of Supra’s OSS was not implemented for any legal reason, but to deny Supra access to the essential tool of providing telecommunications services.

96. That disconnection caused turmoil among Supra’s customers and seriously damaged Supra’s reputation for reliable service. As a direct and proximate result, Supra was irreparably damaged by BellSouth during that three-day ordeal and experienced lost profits and loss of goodwill.

**G. Denial of Access to Central Office Collocation**

97. In order to bring down its operational costs, reduce its over-dependence on BellSouth’s network and provide advanced telecommunications services, utilize cost-based elements Supra has attempted to deploy a facilities-based network for over three years by collocating its equipment in BellSouth Central Offices (“COs”). Supra applied and secured space in approximately 23 of BellSouth’s COs, but has been unable to proceed with the collocation arrangement because of BellSouth’s unreasonable and anti-competitive charges, terms and conditions.

98. Pursuant to Sections 1, 32, 32.2, 33.2, 33.3.1, 33.4, 38.1 of the General Terms and Conditions; Attachment 3, Sections 2.2.1 and 2.2.6 of the Interconnection Agreement 2; 47 CFR Section 51.323; FPSC Order Nos. PSC-98-1417-PCO-TP and PSC-99-0060-FOF-TP in CC Docket No. 980800-TP (issued on January 6, 1999); and other applicable

Federal and State law, Supra has the right to collocate its equipment in BellSouth's Central Offices.

99. In or about April 1998, Supra submitted its first requests to collocate equipment in BellSouth's Central Offices pursuant to Section 1 of the General Terms and Conditions which states that "... BellSouth agrees to provide ... Ancillary Functions to [Supra]. ..." with Ancillary Functions defined in Section 32.1 of the General Terms and Conditions to include Collocation, and 47 CFR Section 51.323(a) which requires that "[a]n incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers." Since that date, BellSouth has engaged in a pattern of unwarranted and unexplained rejections, excuses including space exhaustion, claimed FPSC exemptions which never existed, over-pricing, and undue delay, all aimed at preventing Supra from collocating its equipment. Supra has been forced to expend its limited resources to litigate virtually every issue against BellSouth regarding collocation beginning with space exhaustion, priority issue and provisioning timeline. Eventually Supra was able to obtain Commission Orders granting it the right to collocate equipment in various BellSouth Central Offices. See FPSC Docket No. 98-0800, Order Nos. PSC-98-1417-PCO-TP (Priority Order) and PSC-99-0060-FOF-TP issued on January 6, 1999 (space availability Order).

100. Supra has nothing to show for its work but a trail of excuses and abusive practices employed by BellSouth which have effectively precluded Supra from becoming a facilities-based carrier, either by collocation or by UNEs as set forth above. During that time period, Supra has been forced to delay its business plans as BellSouth refused collocation based upon obstructive practices relating to "caged" collocation, that have

since been struck down by the FCC. BellSouth, not to be deterred, has turned its focus to other discriminatory practices relating to "cageless" collocation and the imposition of unreasonably high collocation costs in violation of both the contract and the newly released collocation Tariff, which are greatly in excess of prices quoted pursuant to Section 38.1 and Table 2 of the General Terms and Conditions. As a result of BellSouth's practices, Supra has lost credibility with suppliers and has had to endure three very expensive and morale-shattering employee layoffs.

101. Time and delay only benefited BellSouth since vendors eventually lost their patience wondering why equipment, which has already been shipped, cannot be installed; while the company cannot generate sufficient revenue to continue its operations. Supra's business plan has been set back several years as a result of BellSouth's tactics, and threatens to be set back even more as a result of BellSouth's current obstructive and discriminatory practices.

102. Pursuant to 47 CFR § 51.323(j), Supra has requested that BellSouth allow Supra to subcontract the construction of collocation arrangements with contractors approved by BellSouth. Although BellSouth did provide Supra with a list of its approved subcontractors, BellSouth has steadfastly refused to allow Supra to subcontract the construction of such collocation arrangements, absent an additional separate contract which would impose additional liability upon Supra.

103. As a direct and proximate result of BellSouth's willful and intentional actions, Supra has been denied the opportunity to (1) implement its business plan, (2) provide services and elements to itself and its customers via Supra's own facilities, and (3)

provide Supra branded services and elements to its customers and carriers. Further, BellSouth's actions have raised Supra's costs.

104. As a direct and proximate result of BellSouth's violation of refusal to provide collocation to Supra, Supra has suffered damages as follows:

a. Supra has been billed at BellSouth's unreasonably high resale rates, instead of at the more competitive UNE (or UNE combination) rates, as set forth above.

b. Supra has been unable to receive revenues in the form set forth in Part IV of the General Terms and Conditions and Attachments 6 and 7 of the agreement. BellSouth is liable for the payment of lost revenues to Supra. Indeed, Interconnection Agreement 1 makes this specific point in its General Terms and Conditions, Section 7.1, which provides:

**BellSouth Liability.** BellSouth shall take financial responsibility for its own actions in causing, or its lack of action in preventing, unbillable or uncollectible Supra Telecommunications and Information Systems, Inc. revenues.

c. Supra has not been able to provide advanced and enhanced telecommunications services, including, but not limited to, fast access to the Internet - xDSL, and is placed at a competitive disadvantage.

d. Supra has been forced to pay higher than necessary operational costs, has been unable to provide services and elements to itself and its customers, and has been unable to provide Supra branded services and elements to its customers and carriers as a result of BellSouth's refusal to permit Supra to collocate its equipment at BellSouth Central Offices.

e. Supra has not been able to deploy its business plan.

- f. BellSouth owes Supra several millions of dollars in unbillable and uncollectible revenues, access charges collected by BellSouth from interexchange carriers, and reciprocal compensation.
- g. Supra has lost goodwill.

## **V. LEGAL CLAIMS**

### **COUNT I – VIOLATION OF FEDERAL ANTITRUST LAW**

#### **A. VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1 (CONTRACTS IN UNREASONABLE RESTRAINT OF TRADE)**

105. Supra re-alleges paragraphs 1 through 104 as if fully set forth herein.

106. Section 1 of the Sherman Act, 15 U.S.C. § 1, prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, among the several States, or with foreign nations.”

107. No reasonable substitute exists at this time for the provision of local voice telecommunications services to residents and to businesses. The telecommunications industry, both residential and business consumers, and the public at large recognize local voice telecommunication services as a discrete product. BellSouth’s local exchange service areas within the State of Florida constitute a distinct geographic market in which consumers in Florida may turn for both local telecommunications and DSL services.

108. During the course of the parties’ relationship since October 5, 1999, BellSouth has entered into contracts and engaged in practices that under the circumstances are unreasonably restrictive of competitive conditions within the relevant geographic and product markets. As described earlier, BellSouth has conditioned the purchase of its DSL services in the relevant product markets on the purchase of BellSouth’s local voice exchange services with the intent of frustrating Supra’s successful entry into the local voice

telecommunications market. BellSouth lacks any economic or competitive justification for such practices. BellSouth has sufficient market power in DSL services in the relevant geographic market to appreciably restrain competition in the local voice market. BellSouth's tying activities achieve their intended purpose, which is to weaken Supra's ability to compete in the local exchange service market. BellSouth's activities restrain trade and commerce by both raising Supra's and BellSouth's other rivals costs and forcing them to enter into a second tier market – the provision of DSL services – in which BellSouth has market power, should they seek to offset BellSouth's anticompetitive practices.

109. BellSouth has also entered into long-term exclusive contracts with local voice customers locking them into arrangements that have the effect of substantially lessening both Supra's ability to compete and competition in general. These contracts have substantial early termination penalties and rates that are so low that customers would have no economic justification switching to a competitor. These exclusive contracts, given BellSouth's overwhelming market power in the relevant market for wireline voice telecommunications tend to create or maintain a monopoly in such services. BellSouth lacks any competitive justification for these long term deals that would offset the harm to competition. BellSouth's purpose, rather, is to restrain trade and commerce.

110. As a direct and proximate result of BellSouth's tying of local exchange voice and DSL services together and its exclusive dealing with local exchange customers, Supra has been effectively denied the benefits of competing within the framework of free market and has suffered damages in an amount to be determined at hearing, including, but not necessarily limited to, increased costs, loss of customers, lost profits and injury to Supra's business reputation and good will. As a direct and proximate result of BellSouth's



conduct, consumers in the relevant market have been harmed because they have been deprived of the benefits of meaningful competition, including lower prices and better services.

**B. VIOLATION OF SECTION 2 OF THE SHERMAN ACT, 15 U.S.C. § 2 - (MONOPOLIZATION)**

111. Supra re-alleges paragraphs 1 through 110 as if fully set forth herein.

112. It is a violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, for any person to “monopolize . . . any part of the trade or commerce among the several States, or with foreign nations.”

113. During the course of the parties’ relationship since October 5, 1999, BellSouth has engaged in a pattern of anticompetitive practices and conduct designed to prevent Supra from acquiring customers, growing its business, and implementing its business plan. BellSouth has engaged in these practices and conduct in order to preserve and maintain BellSouth’s monopoly power in the wireline voice telecommunications market in Florida. BellSouth’s conduct is exclusionary and has no business justification other than to harm Supra and other competitors, raise Supra costs and those costs of other competitors and maintain the barriers to entry protecting BellSouth’s monopoly. BellSouth’s conduct has harmed consumers by reducing choices for local telecommunications services, preventing meaningful price competition for such services, and retarding innovation in the provision of such services.

114. BellSouth uses its monopoly position to exclude Supra and competition in general in the relevant product and geographic markets. Specifically, as explained above, BellSouth has engaged in predatory pricing of its retail local exchange voice services. BellSouth has denied Supra access to essential facilities, including UNEs, OSS, and co-

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**RECEIVED**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE MIDDLE DISTRICT OF ALABAMA**  
**• 2001 DISTRICT ALA •**

J. P. HACKETT, CLK  
 NOW COMMUNICATIONS, INC. DISTRICT COURT  
 DISTRICT ALA

Plaintiff,

v.

**BELLSOUTH TELECOMMUNICATIONS,**  
**INC.,**

Defendant.

CASE NO.:

**JURY TRIAL DEMANDED****COMPLAINT**

NOW Communications, Inc., Plaintiff, by and through its undersigned counsel, brings this complaint against BellSouth Telecommunications, Inc., Defendant, to recover damages for injuries sustained by it as the result of the actions of the Defendant.

**I. Parties**

1. NOW Communications, Inc. ("NOW") is a Mississippi corporation with offices Jackson, Mississippi. It is registered to do business and is doing business in the State of Alabama.

2. BellSouth Telecommunications, Inc. ("BellSouth") is a foreign corporation. BellSouth is doing business within the Northern Division of the United States District Court for the Middle District of Alabama and can be found therein. BellSouth may be served with the process of this Court by service upon its registered agent for service of process, CSC of Gwinnett Co., Inc., 4845 Jimmy Carter Boulevard, Norcross, Georgia 30093.

**II. Jurisdiction and Venue**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1337, and 1367, 15 U.S.C. §§2, 15, 22 and 26 and principles of pendent and supplemental jurisdiction.

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4. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 and 15 U.S.C. §§15, 22 and 26 in that the defendant can be found or transacts business in this district.

5. Jurisdiction over the defendant comports with the Constitution, laws and statutes of the United States.

### III. General Facts

6. NOW is a Competitive Local Exchange Carrier (CLEC). It is a Mississippi corporation, established in 1997 to provide telecommunications services through resale of residential telecommunications services. NOW Communications, Inc. is authorized to provide, and does in fact provide, residential telecommunications services through the BellSouth network within the BellSouth operating area composed of Alabama, Mississippi, Tennessee, Kentucky, Louisiana, Florida, North Carolina, South Carolina and Georgia. NOW Communications, Inc. provides residential telephone service to credit-challenged customers whose telephone service has been disconnected by BellSouth or who have been denied telephone service by BellSouth.

7. BellSouth is an Incumbent Local Exchange Carrier (ILEC). It is a regional telecommunications company operating in the southeastern United States, including Montgomery, Alabama. BellSouth is a provider of telecommunications services. BellSouth is, and historically has been, a monopoly, charged with the responsibility of providing universal regulated telephone services through its network and facilities. BellSouth acquired its monopoly status after the breakup of the AT&T monopoly in 1982. BellSouth provides telephone services through its network and facilities in Alabama, Mississippi, Tennessee, Kentucky, Louisiana, Florida, North Carolina, South Carolina and Georgia. BellSouth acquired and maintains monopoly status in its operating area, wherein NOW Communications is attempting to compete with BellSouth in the provision of residential telephone service through the BellSouth network

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and facilities. With willful intention, BellSouth has maintained its monopoly in the market, and with willful intention it has exercised its monopoly power in the relevant market.

8. BellSouth does not provide universal telephone services in its operating area. Approximately fifteen percent (15%) of the households in the BellSouth operating area are denied telephone service. Telephone services are essential services, constituting the lifeline for the health and safety of the public. Citizens, regardless of economic status, have the right to access telephone services, which provide the link to public necessities such as employment opportunities, emergency services, educational services, financial services, safety services, property protection services and health services.

9. BellSouth has denied individuals' rights and privileges to universal telephone services by the exercise of monopolistic practices. BellSouth's monopoly status has been declared unlawful. BellSouth is required by law to provide open access to its facilities in the furtherance of competition. BellSouth is required by law to allow alternative providers access to its network for the provision of telephone services. BellSouth has maintained its monopolistic practices and its anti-competitive actions against alternative providers, including NOW Communications, which have denied these alternative providers open and reasonable access to its network.

10. NOW is an alternative provider of telephone services through the BellSouth network and facilities. NOW provides its customers with pre-paid local residential telephone services in BellSouth's operating area. NOW's customers have been precluded from essential telephone services from BellSouth by BellSouth's unreasonable and restrictive requirements. NOW obtains services directly from BellSouth at discounted rates and resells the

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telecommunications services to its own prepaid residential customers in the BellSouth operating area.

11. NOW and BellSouth entered into their first Resale Agreement in May 1997. In this agreement, NOW agreed to purchase telecommunications services from BellSouth and resell them to its own customers. Upon the expiration of the first Resale Agreement, NOW and BellSouth entered into the current Resale Agreement in August 2000. The second Resale Agreement provided for, among other things, a volume and terms arrangement whereby the "toll block charge" to NOW and its customers would be provided by BellSouth without charge. The volume and term agreement, which included the toll block charge waiver, was consideration for NOW's agreement to pay certain OSS charges. The "toll block charges" waiver and the OSS charges were basically an offset of approximately sixty-five thousand dollars (\$65,000.00) per month on the BellSouth telephone bills to NOW Communications and its affiliates.

12. On August 14, 2001, BellSouth notified NOW Communications that it was entitled to a credit for NOW's previous payment of various "toll block charges" for a period of time beginning November 1999 through July 31, 2000. BellSouth's imposition of toll block charges was a punitive step to preempt NOW's customer base. This action by BellSouth indicates its anti-competitive activity and monopolistic intent.

13. The second Resale Agreement, entered into in August 2000, was the result of a long and difficult period of negotiation and arbitration between NOW and BellSouth which cost NOW Communications substantial money.

14. BellSouth has violated the statutory requirement of good faith and fair dealing owed by it to NOW. BellSouth charged NOW with a toll-blocking deposit for credit-challenged customers, which BellSouth was not entitled to collect from NOW.

15. NOW is dependent on BellSouth to provide it with access to its network for interconnection on a non-discriminatory basis. NOW has no alternative facility for access and interconnection and is wholly dependent upon BellSouth for connection to the network and the provision of telecommunications services to its customers. BellSouth required payment of the toll block charge by NOW, a requirement that was in willful, wanton and reckless disregard of the duties and obligations imposed upon it by lawful mandate. BellSouth's requirement was designed to financially cripple NOW. BellSouth obviously abhors competition that threatens its historic monopoly. BellSouth has set out on a course of action deliberately designed to destroy NOW's business.

16. BellSouth declares that the provision of telecommunications services to alternative providers such as NOW demonstrates competition. BellSouth represents that it has complied with the law requiring competition in the provision of residential telecommunications services when in fact BellSouth has restrained competition. Alternative carriers have acquired very few residential telephone customers, which contradicts the representations of BellSouth that it has complied with the law requiring competition. BellSouth's actions are contrary to lawful requirements to open the market to competition for the provision of residential telecommunications services.

17. Because of BellSouth's deliberate and willful failure to fulfill its obligations to NOW, it is impossible for NOW to fulfill its obligations to its customers. BellSouth did not negotiate with NOW in good faith, as it was required. BellSouth has charged NOW for sums it is not entitled to recover. NOW's payment of these illegal charges has caused it to suffer great financial hardship.

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18. BellSouth is obligated under the terms of the law to provide access and interconnection on a non-discriminatory basis and to provide network features and functions capable of blocking optional affiliated services. BellSouth has refused to abide by the law and has consistently continued to bill NOW for toll block fees and other tolls, in violation of the law.

19. BellSouth's procedures, practices and policies are grossly inadequate, either by specific design or gross negligence. Personnel employed by BellSouth are improperly trained and supervised and do not meet the test of providing seamless service and equal facilities for interconnection and access. BellSouth's inadequate procedures, practices and policies are part of its larger plan to maintain its monopoly position at the expense of alternative providers, such as NOW. BellSouth's provision of inadequate services and facilities is a deliberate action in restraint of trade and competition.

20. Upon the advice and recommendation of BellSouth, NOW contracted with BellSouth's subsidiary, BellSouth Communication Systems, LLC ("BCS") for the purchase and installation of a call center computer system for use in its Jackson, Mississippi offices. When the system was finally installed months after the original installation date agreed upon by the parties, it was not operational, as promised and represented by BCS. BellSouth's intentional or grossly negligent actions in recommending its subsidiary for this critical facility when BellSouth knew or should have known that the subsidiary could not perform demonstrates yet another instance of BellSouth operating out of a mindset to protect its monopoly position with the intention of causing injury to NOW.

21. BellSouth's dealings with NOW in relation to its obligations under the law are in reckless, gross disregard of the duty of good faith and fair dealing. The pattern of conduct of its employees in providing deceptive information, misinformation and wrong information to NOW

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constitutes an act in contravention of BellSouth's duty of good faith and fair dealing as required by law.

#### IV. Additional Antitrust Facts

22. The allegations of paragraphs 1 through 21 are incorporated herein by reference.

23. NOW's antitrust claims are founded upon the Sherman Act, 15 U.S.C. §2, wherein BellSouth is prohibited from monopolizing, or attempting to monopolize, or combining or conspiring with any other person or persons to monopolize any part of the trade or commerce among the several States or with foreign nations.

24. BellSouth knowingly and willfully acquired and knowingly and willfully maintained its monopoly in the relevant market and relevant geographic market. BellSouth knowingly and willfully exercised monopoly power in the relevant market and relevant geographic market, which resulted in antitrust injury and damages to NOW. BellSouth knowingly and willfully attempted to monopolize the relevant market and the relevant geographic market. BellSouth knowingly and willfully continues a dangerous probability of monopolizing the relevant market with the specific intent and purpose to monopolize the relevant market and the relevant geographic market. BellSouth's deliberate actions and conduct in exercising monopoly power, anti-competitive practices, restraint of trade and other unlawful conduct has been and is continuing in furtherance of its knowing and willful attempt to monopolize the market. At all times relevant to this action, BellSouth has acted pursuant to its anti-competitive intent.

25. The acts and omissions of BellSouth did, in fact, have the desired purpose of destroying and/or restraining competition and creating financial and monopolistic market power for BellSouth as alleged.



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26. The acts and omissions of BellSouth carried its pernicious impact on competition with no offsetting redeeming benefit or legal business justification.

27. As a direct and legal result of the acts of BellSouth, NOW has incurred the damages alleged.

28. BellSouth engaged in the conduct alleged with full knowledge that it was violating antitrust laws and that its conduct was illegal. Despite such knowledge, BellSouth acted as alleged with the specific intent of destroying and/or restraining competition, profiting from its conscious and willful disregard of the harm caused to its competitors, including NOW, and the public. BellSouth's conduct was malicious and oppressive and warrants imposition of punitive damages.

29. BellSouth maintains the public position that it welcomes competition and has no reason to deny competition. In fact, BellSouth's continued course of conduct is designed to ensure that it retains its monopoly power to the detriment of its competitors and the public.

30. After the breakup of AT&T in 1982, BellSouth acquired and maintained a monopoly in the provision of telecommunications services in the nine states which form its operating area (Alabama, Mississippi, Louisiana, Georgia, Tennessee, Kentucky, Florida, South Carolina and North Carolina). After 1996, BellSouth maintained its monopoly status. The Telecommunications Act of 1996 requires dissolution of the Bell monopoly status.

31. The law requires an open marketplace to facilitate competition to BellSouth in the provision of telecommunications services through the local exchange. Competition was mandated to create new development, improve services and provide greater consumer choice and universal service. BellSouth has frustrated the purposes of the law and has restrained

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competition in the relevant market by refusing to facilitate mandated competition and by willfully maintaining its monopoly power.

#### V. Monopolization

32. BellSouth has willfully acquired and maintained its monopoly power in an effort to foreclose competition in order to maintain its competitive advantage and to destroy NOW. BellSouth has willfully and knowingly attempted to maintain its monopoly in the relevant market through the exercise of its monopoly status and power, to the exclusion and injury of NOW. BellSouth's anti-competitive conduct establishes the dangerous probability of its success in monopolizing the relevant market. In 1996 BellSouth controlled one hundred percent (100%) of the provision of residential telecommunications services in the relevant geographic market. Based upon its status as a Regional Bell Operating Company, BellSouth was mandated to open the telecommunications market to competition and to provide non-discriminatory access to residential telecommunications services. BellSouth maintains control of ninety-eight percent (98%) of the residential telecommunications services in the relevant geographic market.

#### VI. Monopoly Power

33. BellSouth has willfully acquired and willfully maintains monopoly power in the relevant product or service market for provision of residential telecommunications services. BellSouth's monopoly status and power is in fact in place, and BellSouth exercises its monopoly power in the relevant market in restraint of trade and competition, maintaining in excess of ninety-eight percent (98%) of the residential telecommunications lines and services in the relevant market. NOW is wholly dependent upon BellSouth to provide it with access to telecommunications services for resale. BellSouth's provision of nondiscriminatory access to the local exchange is an essential facility, which is necessary for NOW to conduct business. Access

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to the local exchange is not available from alternative sources and cannot be feasibly duplicated. NOW cannot effectively compete in the relevant market without access to the essential facility. BellSouth has no legitimate business reason to refuse to deal with NOW as statutorily mandated.

#### VII. Relevant Market

34. For purposes of NOW's antitrust claims, the relevant product or service market is or includes the provision of residential telecommunications services through the BellSouth networks and facilities. The relevant geographic market for assessing competition in the provision of residential telecommunications services through the BellSouth networks is the BellSouth operating area, which includes the nine states of Alabama, Mississippi, Tennessee, Kentucky, Louisiana, Florida, North Carolina, South Carolina and Georgia. Prior to the entry of NOW and other alternative providers into the market, the relevant market had no alternative for the provision of residential telecommunications services. The relevant market was locked in to the BellSouth monopoly. The entry of NOW and other alternative providers into the relevant market provides those disconnected and disenfranchised customers in the relevant market an alternative for residential telecommunications services. The restraint and elimination of competition for providing local residential telecommunications denies the relevant market an alternative carrier.

35. BellSouth is the owner and has the exclusive control over the network, switches, physical plant and interconnection facilities, which constitutes an essential facility for access to all providers of residential telecommunications services through the local exchange.

#### VIII. Refusal to Deal

36. BellSouth has refused to deal with NOW with the intention to strengthen its control over the relevant market. BellSouth has refused to deal with NOW in good faith.

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**IX. Essential Facility**

37. BellSouth has restrained, restricted and prevented NOW and other alternative providers from providing residential telecommunications services, with the specific intent to deny NOW and other alternative providers lawful access to the essential facility. BellSouth has also restrained, restricted and prevented competition in the relevant market.

**X. Interstate Commerce**

38. BellSouth's conduct complained of herein has taken place in and affected the flow of interstate commerce in the United States of America, including the relevant market.

39. BellSouth's conduct complained of herein has directly, substantially and foreseeably restrained such commerce.

40. The provision of residential telecommunications services directly affects interstate commerce. Business is conducted among the several states, including the nine BellSouth operating states, using residential telecommunications services. NOW does business in all nine BellSouth operating states. Residential customers use telecommunications services to purchase products, goods and services and to access educational, financial and public safety services, among other uses.

41. For all of the above and foregoing, BellSouth is liable to the Plaintiff NOW for actual damages, punitive damages and treble damages as follows:

**COUNT ONE**

42. The allegations of paragraphs 1 through 41 are incorporated herein by reference.

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43. BellSouth's actions in charging and collecting tolls from NOW to which BellSouth is not entitled under the law is an illegal use of BellSouth's monopoly power and was a part of BellSouth's continuing plan to destroy NOW's business.

44. As a result of BellSouth's negligent acts and/or omissions in disregard of the Plaintiff's rights, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

#### COUNT TWO

45. The allegations of paragraphs 1 through 44 are incorporated herein by reference.

46. BellSouth's actions in refusing to provide the Plaintiff with reasonable and lawful access to its network and facilities on a nondiscriminatory basis constitute the Defendant's negligence and gross negligence and violate the Defendants' established duty and standard of conduct imposed by law.

47. As a result of BellSouth's negligent acts and/or omissions in disregard of the Plaintiff's rights, the Plaintiff has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

#### COUNT THREE

48. The allegations of paragraphs 1 through 47 are incorporated herein by reference.

49. BellSouth has breached legal and procedural requirements in charging the Plaintiff an illegal toll block fee in violation of the law.

50. As a result of BellSouth's willful and wrongful acts and/or omissions in disregard of its duties and obligations under the law, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

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**COUNT FOUR**

51. The allegations of paragraphs 1 through 50 are incorporated herein by reference.

52. BellSouth has failed and refused to follow legal mandates by refusing to provide NOW with reasonable and non-discriminatory access to its networks and facilities.

53. As a result of BellSouth's willful and wrongful acts and/or omissions in disregard of its duties and obligations owed to the Plaintiff under the law, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

**COUNT FIVE**

54. The allegations of paragraphs 1 through 53 are incorporated herein by reference.

55. BellSouth's destructive and anti-competitive practices have precluded the Plaintiff from reasonably entering the market and successfully establishing its business.

56. As a result of BellSouth's willful and reckless acts and/or omissions in reckless disregard of the Plaintiff's rights, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

**COUNT SIX**

57. The allegations of paragraphs 1 through 56 are incorporated herein by reference.

58. BellSouth, in willful and reckless disregard for the law, has acted to preserve and maintain its historic monopoly, contrary to the law and spirit of legal mandates for free and open competition in the market for the provision of residential telecommunications services.

59. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the law, NOW has been substantially damaged, for which it is

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entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

#### COUNT SEVEN

60. The allegations of paragraphs 1 through 59 are incorporated herein by reference.

61. BellSouth has maliciously and tortiously interfered with present contractual and business relationships between NOW and its customers.

62. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of the Plaintiff's rights, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

#### COUNT EIGHT

63. The allegations of paragraphs 1 through 62 are incorporated herein by reference.

64. BellSouth has maliciously and tortiously interfered with the prospective contractual and business relationships between NOW and its prospective customers.

65. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of the Plaintiff's rights, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

#### COUNT NINE

66. The allegations of paragraphs 1 through 65 are incorporated herein by reference.

67. BellSouth has breached the duty of good faith and fair dealing, which it owed to NOW.

68. As a result of BellSouth's willful and reckless acts and/or omissions, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

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**COUNT TEN**

69. The allegations of paragraphs 1 through 68 are incorporated herein by reference.

70. BellSouth has exercised coercion and duress against NOW through its abuse of the negotiation process. During the negotiations with NOW, BellSouth used its superior economic position, obtained through its historic monopoly, to negotiate with NOW in violation of the duty of good faith and fair dealing. NOW negotiated with BellSouth in good faith. NOW later learned that concessions it believed it had won from BellSouth through expensive and time-consuming negotiations were actually items it was entitled to receive from BellSouth under the law.

71. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the law, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

**COUNT ELEVEN**

72. The allegations of paragraphs 1 through 71 are incorporated herein by reference.

73. BellSouth negligently and fraudulently misrepresented that it would provide NOW with access to the local exchange and interconnection on a nondiscriminatory basis, as required by law. These representations were false when made and BellSouth knew they were false at the time it made them.

74. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations under the law, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.



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**COUNT TWELVE**

75. The allegations of paragraphs 1 through 74 are incorporated herein by reference.

76. In 1999, BellSouth instituted a waiver of toll block charges for its own credit-challenged customers. This waiver was part of BellSouth's plan to close off the market of potential credit-challenged subscribers from NOW and similar alternative providers. BellSouth knew that NOW's customer base consisted of credit-challenged customers who either could not obtain residential telephone service from BellSouth or had had their BellSouth residential telephone service disconnected. BellSouth illegally and improperly used its monopoly power to target this potential customer base and foreclose NOW from a primary source of new customers.

77. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

**COUNT THIRTEEN**

78. The allegations contained in paragraphs 1 through 77 are incorporated herein by reference.

79. BellSouth has instituted other illegal charges and collections, not authorized by law, as part of its continuing misuse of its monopoly power in cutting off significant portions of the market of potential subscribers to alternative providers in an effort to foreclose competition and preserve its monopoly status.

80. As a result of BellSouth's willful and reckless acts and/or omissions in disregard

of its duties and obligations, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

#### COUNT FOURTEEN

81. The allegations of paragraphs 1 through 80 are incorporated herein by reference.

82. BellSouth's conduct has been willful, reckless, in bad faith and in gross, careless, callous, indifferent and reckless disregard of the rights of NOW, which entitles NOW to punitive damages.

83. As a result of BellSouth's willful and reckless acts and/or omissions in disregard of its duties and obligations, NOW has been substantially damaged, for which it is entitled to recover actual, consequential and punitive damages in an amount to be determined by the court and jury.

#### COUNT FIFTEEN

84. The allegations of paragraphs 1 through 83 are incorporated herein by reference.

85. BellSouth has monopolized, or attempted to monopolize, the business of providing residential telecommunications services in the relevant market and relevant geographic market. BellSouth has excluded competition unfairly in violation of the Sherman Act, 15 U.S.C. §2, by willful exercise of its willfully acquired and willfully maintained monopoly power and has used its skill, capital and resources for the purpose and intent of restraining trade, limiting and eliminating competition and controlling and monopolizing the relevant market, causing injury and damages to NOW.

86. As a result of BellSouth's anti-competitive conduct, NOW has been substantially damaged, for which it is entitled to recover damages that include, but are not limited to, actual

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damages, punitive damages, treble damages, costs, attorneys' fees and both pre- and post-judgment interest as permitted by law.

#### COUNT SIXTEEN

87. The allegations of paragraphs 1 through 86 are incorporated herein by reference.

88. NOW seeks to enjoin BellSouth from any disconnection and/or interruption of NOW's service and from terminating the Resale Agreement. Disconnection or interruption of NOW's service to its customers would permanently destroy NOW. NOW further seeks to enjoin BellSouth from treating NOW's customers in a discriminatory fashion, as described above.

89. NOW has no adequate or speedy remedy at law to prevent the above described misconduct of BellSouth.

#### XI. Sherman Act § 2 Claims for Relief

90. The allegations of paragraphs 1 through 89 are incorporated herein by reference.

91. BellSouth has engaged in acts, practices and a continuing course of conduct by which it intended, and did in fact, acquire, maintain and perpetuate its monopoly in the provision of residential telecommunications services.

92. In furtherance of this plan, BellSouth has engaged in a continuing course of the following exclusionary anti-competitive and monopolistic practices, among others:

- (a) BellSouth has denied NOW reasonable nondiscriminatory access to its network and facilities;
- (b) BellSouth has refused to provide to NOW reasonable and lawful services;
- (c) BellSouth has refused to provide to NOW an equal and non-discriminatory essential facility;

- (d) BellSouth has refused to deal in good faith, on reasonable commercial terms;
- (e) BellSouth has refused to provide NOW equal and non-discriminatory networks and systems;
- (f) BellSouth has perpetrated a scheme of severe business interruption;
- (g) BellSouth has perpetrated, through deliberate design and actions, a scheme to paralyze the Plaintiff's business;
- (h) BellSouth has perpetrated, through deliberate design and actions, a scheme of inconsistent policies and procedures with a pattern of conduct to disseminate deceptive information, misinformation and inaccurate directions to prevent the Plaintiff's successful delivery of residential telecommunications services;
- (i) BellSouth, through deliberate design and actions, launched acts of aggression against the Plaintiff in a continuing plan to destroy NOW, including collecting from NOW toll block fees to which it was not entitled;
- (j) BellSouth, through deliberate design and actions, has interfered with NOW's business relations;
- (k) BellSouth, through deliberate design and actions, has interfered with NOW's prospective contracts and prospective business relations;
- (l) BellSouth, through deliberate design and actions, has breached its duty of good faith and fair dealing;

93. The actual, probable and intended effects of the foregoing acts, and the continuing

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course of BellSouth's anti-competitive conduct, have caused injury to NOW, to consumers and to competition in the provision of telecommunications services.

94. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. §26, NOW is entitled to an award of the costs of this action, including reasonable attorneys' fees.

95. Pursuant to Section 4 of the Clayton Act, 15 U.S.C. §15, NOW is also entitled to recover treble the damages that it has suffered or will suffer as a result of this violation of the Sherman Act.

WHEREFORE, Plaintiff demands relief granting to it:

- (a) a declaration that BellSouth has violated and is in violation of the Sherman Act § 2;
- (b) the damages sustained as a result of BellSouth's violations of the Sherman Act in an amount to be determined at trial;
- (c) a trebling of any and all damages awarded pursuant to 15 U.S.C. §15;
- (d) an award of interest and costs, pursuant to 15 U.S.C. §15;
- (e) an award of reasonable attorneys' fees pursuant to 15 U.S.C. §15; and
- (f) such other and further relief as this Court deems just and proper.

96. BellSouth has engaged in the conduct herein with the specific intent to monopolize the provision of residential telecommunications services. Through its refusal to allow non-discriminatory access to the local exchange, BellSouth has been able to obtain exclusive control over all provision of residential telecommunications services. BellSouth has attempted to expand and maintain its control of this market and to monopolize the market by denying access to residential telecommunications services as mandated by law and by engaging in other wrongful acts to prevent NOW from competing in the market, as set forth above.

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97. BellSouth's specific intent is to monopolize the provision of residential telecommunications services in the relevant geographic market.

98. BellSouth has succeeded in its attempt to monopolize the relevant market, and there exists a dangerous probability of its success in monopolizing the relevant market through its conduct in furtherance of its intent to monopolize, given the fact that it currently exercises control over ninety-eight percent (98%) or more of the provision of residential telecommunications services in the relevant geographic market.

99. BellSouth's anti-competitive conduct has already proximately caused injury and damage to the business of NOW, and NOW will continue to be so injured unless BellSouth is enjoined from continuing to engage in the foregoing violations of law.

100. The actual, probable and intended effects of the foregoing acts, and the continuing course of BellSouth's anti-competitive conduct, have caused injury to consumers and to competition in the provision of residential telecommunications services, as set forth above.

101. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. [24, NOW is entitled to an injunction to restrain this violation of the Sherman Act, 15 U.S.C. [2, and to an award of the costs of this action, including reasonable attorneys' fees.

#### **XII. Demand for Judgment**

**WHEREFORE, PREMISES CONSIDERED, NOW Communications, Inc., Plaintiff** herein, demands judgment against BellSouth Telecommunications, Inc. for its actions specified in Counts One through Fourteen as follows:

- (a) Monetary damages, actual, consequential and punitive, for injuries sustained to the business of NOW, including, but not limited to: all sums paid to BellSouth for improper toll block charges; loss of past, present and

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prospective customers; losses incurred through substantial business expenses; loss of past, present and future business revenue; loss of past, present and future business profit; loss of past, present and future value of the business; loss of past, present and future value of the company; loss of past, present and future capital of the business; and loss of past, present and future business relationships, in a sum to be determined by the Court, but not less than twenty million dollars (\$20,000,000.00) in actual compensatory damages and not less than one hundred million dollars (\$100,000,000.00) in punitive damages, all costs of this action, attorney fees and both pre-judgment and post-judgment interest; and

- (b) Such other relief as this court deems just and proper.

#### XIII. Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, NOW Communications, Inc., Plaintiff herein, prays for relief from the actions of BellSouth Telecommunications, Inc. specified in Count Fifteen as follows:

- (a) Monetary damages sustained as a result of injury due to BellSouth's violations of the Sherman Act, 15 U.S.C. §2, in an amount to be ascertained at trial pursuant to 15 U.S.C. §15;
- (b) Monetary award of treble damages for injury due to BellSouth's violations of the Sherman Act, 15 U.S.C. §2, in an amount to be ascertained at trial pursuant to 15 U.S.C. §15;
- (c) Monetary damages, actual and punitive, in a sum to be determined by the Court, but not less than twenty million dollars (\$20,000,000.00) in actual

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compensatory damages and not less than one hundred million dollars (\$100,000,000.00) in punitive damages, all costs of this action, attorney fees and both pre-judgment and post-judgment interest; and

(d) Such other and further relief as this Court deems just and proper.

**XIV. Demand for Injunctive Relief**


WHEREFORE, PREMISES CONSIDERED, NOW Communications, Inc., Plaintiff herein, prays for injunctive relief from the actions of BellSouth Telecommunications, Inc. specified in Count Sixteen as follows:

- (a) An award of preliminary or permanent injunctive relief, pursuant to 15 U.S.C. § 26, to the degree the Court may deem appropriate; and
- (b) Such other and further relief as this Court deems just and proper.

**XV. Jury Trial Demanded**

Plaintiff demands trial by jury of all issues so triable in this cause.

THIS, the 14 day of December, 2001.

  
\_\_\_\_\_  
Lee H. Copeland (COPIED)  
Counsel for Plaintiff,  
NOW Communications, Inc.

**OF COUNSEL:**

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FROM :

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Serve Defendant As Listed Below By Certified Mail:

BellSouth Telecommunications, Inc.  
c/o Prattice Hall Corporation Systems  
150 S. Perry Street  
Montgomery, Alabama 36104

BellSouth Telecommunications, Inc.  
North Carolina Utilities Commission  
Docket Nos. P-772, Sub 8; P-913, Sub 5; P-989,  
Sub 3; P-824, Sub 6; and P-1202, Sub 4  
Joint Petitioners' 1st Request for Production  
April 6, 2004  
**SUPPLEMENTAL RESPONSE** Item No. 2-28(A)-1

**ATTACHMENT TO REQUEST FOR PRODUCTION,  
SUPPLEMENTAL RESPONSE TO,  
ITEM NO. 2-28(A)-1**

**INTERCONNECTION  
AGREEMENT  
BETWEEN  
BELLSOUTH TELECOMMUNICATIONS INC.  
AND  
Cinergy Communications Company**

available, Cinergy Communications Company may utilize the Unbundled Loop Modification process or the Special Construction process, as applicable, to obtain the Loop type ordered.

2.10.1 DSL TRANSPORT SERVICE ON UNE-P

2.10.1.1 For purposes of this Section 2.10.1.1, the term “DSL,” “DSL transport,” or “DSL Transport Services” shall mean that DSL transport service in the BellSouth F.C.C. Number 1 tariff in effect as of, July 12, 2002, the date of the Kentucky Public Service Commission’s Order in Case No. 2001-00432. In order to comply with the Order, BellSouth shall not refuse to provide any DSL transport service to a network service provider pursuant to a request from such network service provider who serves, or desires to serve, an end-user that receives UNE-P based voice services from Cinergy Communications. However, BellSouth shall have no obligation to provide DSL transport on any loop that is not qualified for DSL, provided that BellSouth shall not make a change to any loop so as to make it not qualify for DSL on the basis of that such loop is being converted to UNE-P, rather than on the basis of architectural, mechanical, or physical limitations. 2.10.1.2 The Order in is predicated upon the ability of customers of Cinergy Communications to receive wholesale ADSL transport at the same price it was available pursuant to Bellsouth Tariff F.C.C. Number 1 on the date of that Order. In the event this offering is no longer available for any reason, BellSouth agrees to provide to Cinergy Communications a wholesale ADSL transport product for the duration of this interconnection agreement on the same pricing, terms and conditions as those in the BellSouth Tariff F.C.C. Number 1 as of the date of the Order subject to section 2.10.1.1 above. The terms and prices of BellSouth Tariff F.C.C. Number 1 as it existed on the date of the Order are incorporated herein by reference as necessary to comply with this section.

2.10.1 3 Notwithstanding the foregoing, BellSouth shall have no obligation to provide its retail, DSL-based high speed Internet access service, currently known as BellSouth® FastAccess® DSL service, to an end-user that receives UNE-P based voice services from Cinergy. To the extent BellSouth chooses to deny FastAccess to an end user, BellSouth shall not seek any termination penalties against, or in any other fashion seek to penalize, any such end-user that Cinergy identifies to BellSouth pursuant to a process to be agreed upon and reduced to writing. BellSouth shall also notify the aforementioned end-user at least ten (10) days prior to discontinuing its FastAccess service.

2.10 1.4 Cinergy shall make available to BellSouth at no charge the high frequency spectrum on UNE-P for purposes of enabling BellSouth to provision DSL transport on the same loop as the UNE-P based voice service.

- 2.10.1.5 When BellSouth provides tariffed DSL transport over Cnergy UNE-P, BellSouth shall have the right, at no charge, to access the entire loop for purposes of troubleshooting DSL-related troubles.
- 2.10.1.6 BellSouth shall not be obligated to provide tariffed DSL transport in accordance with this Section 2.10.1 until completion of the modification of systems and processes that will enable BellSouth to qualify Cnergy UNE-P lines for DSL as well as maintain and repair such DSL on Cnergy UNE-P lines. Until such time as BellSouth completes the aforementioned modification of systems and processes, BellSouth agrees to provide to Cnergy Communications wholesale DSL transport service over resale lines on the following conditions: (1) the underlying resale line and its features shall be provided by BellSouth to Cnergy Communications at the rate that Cnergy Communications normally pays for a UNE-P loop/port combination in the pertinent UNE Zone, specifically excluding subscriber line charges, and other charges normally associated with resale; (2) BellSouth shall bill and collect the access or other third party charges applicable to such lines, and shall remit to Cnergy monthly, as a surrogate for such access charges, an amount determined in accordance with the formula set forth in Section 2.10.1.6.1 below; (3) because BellSouth cannot provide hunting between resale and UNE-P lines, any other lines of the end-user served by Cnergy Communications shall also be converted to resale at no charge upon submission of an LSR for such conversion and provided pursuant to (1) and (2) above unless and until BellSouth agrees to provide hunting between resale and UNE-P platforms; and (4) once the aforementioned modification of systems and process is completed, BellSouth agrees to convert all end-user lines affected by this section to UNE-P at no charge upon Cnergy Communications' submission of an executable LSR for such conversion.
- 2.10.1.6.1 The parties agree that the amount payable to Cnergy as a surrogate for access charges in accordance with Section 2.10.1.6 above shall be determined by multiplying the average number of Cnergy resale lines with DSL service, and those lines included in a hunt group with such DSL resale lines in accordance with subsection 3 of Section 2.10.1.6 above, for the most recent three (3) billing cycles preceding the date of this agreement by \$12.00 per line. Such rate is based upon Cnergy's estimate of its access charges, including subscriber line charges, presubscribed interexchange carrier charges, and usage charges, on a per line basis. Within sixty (60) days following the date of this Agreement and upon BellSouth's request, the parties agree to true up this amount to conform with the average per line access charges Cnergy collects on its UNE-P lines. Cnergy shall provide supporting documentation to justify the true up amount.
- 2.10.1.6.2 The Parties agree that subject to Section 2.10.1.6.1, the rates charged pursuant to Section 2.10.1.6 above are not subject to true-up regardless of appeal or change in law. Any change to these rates or to the provisions of Section 2.10.1 et seq. shall

be prospective only in the event of a change in law as described in the General Terms and Conditions of this Agreement.

- 2.10.1.7 Cinergy Communications shall provide BellSouth with all current pertinent customer information necessary for BellSouth to comply with this section. Cinergy Communications authorizes BellSouth to access customer information on BellSouth systems as necessary for BellSouth to comply with this section. BellSouth shall provide Cinergy Communications with all current pertinent loop information necessary for Cinergy Communications to provide DSL over UNE-P, including but not limited to, loop qualification information for UNE-P lines.
- 2 10.1.8 If a request is made for DSL on an existing Cinergy Communications UNE-P line, Cinergy shall cooperate with BellSouth in an effort to determine loop make-up and qualification status. The parties shall mutually agree on a procedure and shall reduce same in writing.

### **3. High Frequency Spectrum Network Element**

#### **3.1 General**

- 3.1.1 BellSouth shall provide Cinergy Communications Company access to the high frequency spectrum of the local loop as an unbundled network element only where BellSouth is the voice service provider to the end user at the rates set forth in this Attachment.
- 3.1.2 The High Frequency Spectrum is defined as the frequency range above the voiceband on a copper loop facility carrying analog circuit-switched voiceband transmissions. Access to the High Frequency Spectrum is intended to allow Cinergy Communications Company the ability to provide Digital Subscriber Line ("xDSL") data services to the end user for which BellSouth provides voice services. The High Frequency Spectrum shall be available for any version of xDSL complying with Spectrum Management Class 5 of ANSI T1.417, *American National Standard for Telecommunications, Spectrum Management for Loop Transmission Systems*. BellSouth will continue to have access to the low frequency portion of the loop spectrum (from 300 Hertz to at least 3000 Hertz, and potentially up to 3400 Hertz, depending on equipment and facilities) for the purposes of providing voice service. Cinergy Communications Company shall only use xDSL technology that is within the PSD mask for Spectrum Management Class 5 as found in the above-mentioned document.
- 3.1.3 Access to the High Frequency Spectrum requires an unloaded, 2-wire copper Loop. An unloaded Loop is a copper Loop with no load coils, low-pass filters, range extenders, DAMLs, or similar devices and minimal bridged taps consistent with ANSI T1.413 and T1 601.

**By and Between**  
**BellSouth Telecommunications, Inc.**  
**And**  
**Aero Communications, LLC**

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2. The Parties agree to delete Attachment 2, Network Elements and Other Services, and the associated rates in their entirety and replace with Attachment 2 and rates reflected as Amendment Exhibit 2, attached hereto and by reference incorporated into this Amendment

3. The Parties agree to delete Attachment 6, Pre-Ordering, Ordering, Provisioning, Maintenance and Repair in its entirety and replace with Attachment 6 reflected as Amendment Exhibit 3, attached hereto and by reference incorporated into this Amendment.

4. Aero and BellSouth shall adopt Section 2.10.1 in Attachment 2 of the Cinergy Communications Company's Interconnection agreement (Cinergy) dated March 20, 2003. The Parties agree that the adopted provision will be added to Attachment 2, Section 2, as set forth below and incorporated herein by this reference. This Adoption shall expire on March 19, 2006, in accordance with Section 2 of the General Terms and Conditions of the Interconnection Agreement between BellSouth and Cinergy.

#### 2.10 1 DSL TRANSPORT SERVICE ON UNE-P

2.10.1.1 For purposes of this Section 2.10 1.1, the term "DSL," "DSL transport," or "DSL Transport Services" shall mean that DSL transport service in the BellSouth F C.C. Number 1 tariff in



effect as of, July 12, 2002, the date of the Kentucky Public Service Commission's Order in Case No. 2001-00432. In order to comply with the Order, BellSouth shall not refuse to provide any DSL transport service to a network service provider pursuant to a request from such network service provider who serves, or desires to serve, an end-user that receives UNE-P based voice services from Cinergy Communications. However, BellSouth shall have no obligation to provide DSL transport on any loop that is not qualified for DSL, provided that BellSouth shall not make a change to any loop so as to make it not qualify for DSL on the basis of that such loop is being converted to UNE-P, rather than on the basis of architectural, mechanical, or physical limitations.

2.10.1.2 The Order is predicated upon the ability of customers of Cinergy Communications to receive wholesale ADSL transport at the same price it was available pursuant to Bellsouth Tariff F.C.C. Number 1 on the date of that Order. In the event this offering is no longer available for any reason, BellSouth agrees to provide to Cinergy Communications a wholesale ADSL transport product for the duration of this interconnection agreement on the same pricing, terms and conditions as those in the BellSouth Tariff F.C.C. Number 1 as of the date of the Order subject to section 2.10.1.1 above. The terms and prices of BellSouth Tariff F.C.C. Number 1 as it existed on the date of the Order are incorporated herein by reference as necessary to comply with this section.

2 10 1.3 Notwithstanding the foregoing, BellSouth shall have no obligation to provide its retail, DSL-based high speed Internet access service, currently known as BellSouth® FastAccess® DSL service, to an end-user that receives UNE-P based voice services from Cinergy. To the extent BellSouth chooses to deny FastAccess to an end user, BellSouth shall not seek any termination penalties against, or in any other fashion seek to penalize, any such end-user that Cinergy identifies to BellSouth pursuant to a process to be agreed upon and reduced to writing. BellSouth shall also notify the aforementioned end-user at least ten (10) days prior to discontinuing its FastAccess service.

2.10.1.4 Cinergy shall make available to BellSouth at no charge the high frequency spectrum on UNE-P for purposes of enabling BellSouth to provision DSL transport on the same loop as the UNE-P based voice service.

- 2.10.1.5 When BellSouth provides tariffed DSL transport over Cinergy UNE-P, BellSouth shall have the right, at no charge, to access the entire loop for purposes of troubleshooting DSL-related troubles.
- 2.10.1.6 BellSouth shall not be obligated to provide tariffed DSL transport in accordance with this Section 2.10.1 until completion of the modification of systems and processes that will enable BellSouth to qualify Cinergy UNE-P lines for DSL as well as maintain and repair such DSL on Cinergy UNE-P lines. Until such time as BellSouth completes the aforementioned modification of systems and processes, BellSouth agrees to provide to Cinergy Communications wholesale DSL transport service over resale lines on the following conditions: (1) the underlying resale line and its features shall be provided by BellSouth to Cinergy Communications at the rate that Cinergy Communications normally pays for a UNE-P loop/port combination in the pertinent UNE Zone, specifically excluding subscriber line charges, and other charges normally associated with resale; (2) BellSouth shall bill and collect the access or other third party charges applicable to such lines, and shall remit to Cinergy monthly, as a surrogate for such access charges, an amount determined in accordance with the formula set forth in Section 2.10.1.6.1 below; (3) because BellSouth cannot provide hunting between resale and UNE-P lines, any other lines of the end-user served by Cinergy Communications shall also be converted to resale at no charge upon submission of an LSR for such conversion and provided pursuant to (1) and (2) above unless and until BellSouth agrees to provide hunting between resale and UNE-P platforms; and (4) once the aforementioned modification of systems and process is completed, BellSouth agrees to convert all end-user lines affected by this section to UNE-P at no charge upon Cinergy Communications' submission of an executable LSR for such conversion.
- 2.10.1.6.1 The parties agree that the amount payable to Cinergy as a surrogate for access charges in accordance with Section 2.10.1.6 above shall be determined by multiplying the average number of Cinergy resale lines with DSL service, and those lines included in a hunt group with such DSL resale lines in accordance with subsection 3 of Section 2.10.1.6 above, for the most recent three (3) billing cycles preceding the date of this agreement by \$12.00 per line. Such rate is based upon Cinergy's estimate of its access charges, including subscriber line charges, presubscribed interexchange carrier charges, and usage charges, on a per line basis. Within sixty (60) days

following the date of this Agreement and upon BellSouth's request, the parties agree to true up this amount to conform with the average per line access charges Cinergy collects on its UNE-P lines. Cinergy shall provide supporting documentation to justify the true up amount.

2.10.1.6.2 The Parties agree that subject to Section 2.10.1.6.1, the rates charged pursuant to Section 2.10.1.6 above are not subject to true-up regardless of appeal or change in law. Any change to these rates or to the provisions of Section 2.10.1 et seq. shall be prospective only in the event of a change in law as described in the General Terms and Conditions of this Agreement.

2.10.1.7 Cinergy Communications shall provide BellSouth with all current pertinent customer information necessary for BellSouth to comply with this section. Cinergy Communications authorizes BellSouth to access customer information on BellSouth systems as necessary for BellSouth to comply with this section. BellSouth shall provide Cinergy Communications with all current pertinent loop information necessary for Cinergy Communications to provide DSL over UNE-P, including but not limited to, loop qualification information for UNE-P lines.

2.10.1.8 If a request is made for DSL on an existing Cinergy Communications UNE-P line, Cinergy shall cooperate with BellSouth in an effort to determine loop make-up and qualification status. The parties shall mutually agree on a procedure and shall reduce same in writing.

5. In the event that Aero consists of two (2) or more separate entities as set forth in the preamble to this Agreement, all such entities shall be jointly and severally liable for the obligations of Aero under this Agreement.

6. The term of this Agreement shall be from the Effective Date as set forth above and shall expire as set forth in section 2 of the Network Telephone Corporation Interconnection Agreement. For the purposes of determining the expiration date of this Agreement pursuant to section 2.4 of the Network Telephone Corporation Interconnection Agreement, the effective date shall be June 20, 2003.

6. Aero shall accept and incorporate any amendments to the Network Telephone Corporation Interconnection Agreement executed as a result of any final judicial, regulatory, or legislative action.

**INTERCONNECTION  
AGREEMENT  
BETWEEN  
BELLSOUTH TELECOMMUNICATIONS INC.  
AND  
SOUTHEAST TELEPHONE, INC.**

Exhibit 1

2.14.5 DSL TRANSPORT SERVICE ON UNE-P

- 2.14.5.1 For purposes of this Section 2.14.5.1, the term "DSL," "DSL transport," or "DSL Transport Services" shall mean that DSL transport service in the BellSouth F.C.C. Number 1 tariff in effect as of, July 12, 2002, the date of the Kentucky Public Service Commission's Order in Case No. 2001-00432. In order to comply with the Order, BellSouth shall not refuse to provide any DSL transport service to a network service provider pursuant to a request from such network service provider who serves, or desires to serve, an end-user that receives UNE-P based voice services from Cinergy Communications. However, BellSouth shall have no obligation to provide DSL transport on any loop that is not qualified for DSL, provided that BellSouth shall not make a change to any loop so as to make it not qualify for DSL on the basis of that such loop is being converted to UNE-P, rather than on the basis of architectural, mechanical, or physical limitations.
- 2.14.5.2 The Order in is predicated upon the ability of customers of Cinergy Communications to receive wholesale ADSL transport at the same price it was available pursuant to Bellsouth Tariff F.C.C. Number 1 on the date of that Order. In the event this offering is no longer available for any reason, BellSouth agrees to provide to Cinergy Communications a wholesale ADSL transport product for the duration of this interconnection agreement on the same pricing, terms and conditions as those in the BellSouth Tariff F.C.C. Number 1 as of the date of the Order subject to section 2.14.5.1 above. The terms and prices of BellSouth Tariff F.C.C Number 1 as it existed on the date of the Order are incorporated herein by reference as necessary to comply with this section.
- 2.14.5.3 Notwithstanding the foregoing, BellSouth shall have no obligation to provide its retail, DSL-based high speed Internet access service, currently known as BellSouth® FastAccess® DSL service, to an end-user that receives UNE-P based voice services from Cinergy. To the extent BellSouth chooses to deny FastAccess to an end user, BellSouth shall not seek any termination penalties against, or in any other fashion seek to penalize, any such end-user that Cinergy identifies to BellSouth pursuant to a process to be agreed upon and reduced to writing. BellSouth shall also notify the aforementioned end-user at least ten (10) days prior to discontinuing its FastAccess service.
- 2.14.5.4 Cinergy shall make available to BellSouth at no charge the high frequency spectrum on UNE-P for purposes of enabling BellSouth to provision DSL transport on the same loop as the UNE-P based voice service.

## Exhibit 1

- 2.14.5.5 When BellSouth provides tariffed DSL transport over Cinergy UNE-P, BellSouth shall have the right, at no charge, to access the entire loop for purposes of troubleshooting DSL-related troubles.
- 2.14.5.6 BellSouth shall not be obligated to provide tariffed DSL transport in accordance with this Section 2.14.5 until completion of the modification of systems and processes that will enable BellSouth to qualify Cinergy UNE-P lines for DSL as well as maintain and repair such DSL on Cinergy UNE-P lines. Until such time as BellSouth completes the aforementioned modification of systems and processes, BellSouth agrees to provide to Cinergy Communications wholesale DSL transport service over resale lines on the following conditions: (1) the underlying resale line and its features shall be provided by BellSouth to Cinergy Communications at the rate that Cinergy Communications normally pays for a UNE-P loop/port combination in the pertinent UNE Zone, specifically excluding subscriber line charges, and other charges normally associated with resale; (2) BellSouth shall bill and collect the access or other third party charges applicable to such lines, and shall remit to Cinergy monthly, as a surrogate for such access charges, an amount determined in accordance with the formula set forth in Section 2.14.5.6.1 below; (3) because BellSouth cannot provide hunting between resale and UNE-P lines, any other lines of the end-user served by Cinergy Communications shall also be converted to resale at no charge upon submission of an LSR for such conversion and provided pursuant to (1) and (2) above unless and until BellSouth agrees to provide hunting between resale and UNE-P platforms; and (4) once the aforementioned modification of systems and process is completed, BellSouth agrees to convert all end-user lines affected by this section to UNE-P at no charge upon Cinergy Communications' submission of an executable LSR for such conversion.
- 2.14.5.6.1 The parties agree that the amount payable to Cinergy as a surrogate for access charges in accordance with Section 2.14.5.6 above shall be determined by multiplying the average number of Cinergy resale lines with DSL service, and those lines included in a hunt group with such DSL resale lines in accordance with subsection 3 of Section 2.14.5.6 above, for the most recent three (3) billing cycles preceding the date of this agreement by \$12.00 per line. Such rate is based upon Cinergy's estimate of its access charges, including subscriber line charges, presubscribed interexchange carrier charges, and usage charges, on a per line basis. Within sixty (60) days following the date of this Agreement and upon BellSouth's request, the parties agree to true up this amount to conform with the average per line access charges Cinergy collects on its UNE-P lines. Cinergy shall provide supporting documentation to justify the true up amount.

Exhibit 1

- 2.14.5.6.2      The Parties agree that subject to Section 2.14.5.6.1, the rates charged pursuant to Section 2.14.5.6 above are not subject to true-up regardless of appeal or change in law. Any change to these rates or to the provisions of Section 2.14.5 et seq. shall be prospective only in the event of a change in law as described in the General Terms and Conditions of this Agreement.
- 2.14.5.7        Cinergy Communications shall provide BellSouth with all current pertinent customer information necessary for BellSouth to comply with this section. Cinergy Communications authorizes BellSouth to access customer information on BellSouth systems as necessary for BellSouth to comply with this section. BellSouth shall provide Cinergy Communications with all current pertinent loop information necessary for Cinergy Communications to provide DSL over UNE-P, including but not limited to, loop qualification information for UNE-P lines.
- 2.14.5.8        If a request is made for DSL on an existing Cinergy Communications UNE-P line, Cinergy shall cooperate with BellSouth in an effort to determine loop make-up and qualification status. The parties shall mutually agree on a procedure and shall reduce same in writing.

**By and Between**  
**BellSouth Telecommunications, Inc.**  
**And**  
**ITC DeltaCom Communications, Inc.**



**2.13. DSL TRANSPORT SERVICE ON UNE-P**

- 2.13.1 For purposes of this Section 2.13.1, the term “DSL,” “DSL transport,” or “DSL Transport Services” shall mean that DSL transport service in the BellSouth F.C.C. Number 1 tariff in effect as of, July 12, 2002, the date of the Kentucky Public Service Commission’s Order in Case No. 2001-00432. In order to comply with the Order, BellSouth shall not refuse to provide any DSL transport service to a network service provider pursuant to a request from such network service provider who serves, or desires to serve, an end-user that receives UNE-P based voice services from Cinergy Communications. However, BellSouth shall have no obligation to provide DSL transport on any loop that is not qualified for DSL, provided that BellSouth shall not make a change to any loop so as to make it not qualify for DSL on the basis of that such loop is being converted to UNE-P, rather than on the basis of architectural, mechanical, or physical limitations.
- 2.13.2 The Order in is predicated upon the ability of customers of Cinergy Communications to receive wholesale ADSL transport at the same price it was available pursuant to Bellsouth Tariff F C.C. Number 1 on the date of that Order. In the event this offering is no longer available for any reason, BellSouth agrees to provide to Cinergy Communications a wholesale ADSL transport product for the duration of this interconnection agreement on the same pricing, terms and conditions as those in the BellSouth Tariff F.C.C Number 1 as of the date of the Order subject to section 2.13.1 above. The terms and prices of BellSouth Tariff F.C.C. Number 1 as it existed on the date of the Order are incorporated herein by reference as necessary to comply with this section.
- 2.13.3 Notwithstanding the foregoing, BellSouth shall have no obligation to provide its retail, DSL-based high speed Internet access service, currently known as BellSouth® FastAccess® DSL service, to an end-user that receives UNE-P based voice services from Cinergy. To the extent BellSouth chooses to deny FastAccess to an end user, BellSouth shall not seek any termination penalties against, or in any other fashion seek to penalize, any such end-user that Cinergy identifies to BellSouth pursuant to a process to be agreed upon and reduced to writing. BellSouth shall also notify the aforementioned end-user at least ten (10) days prior to discontinuing its FastAccess service.
- 2.13.4 Cinergy shall make available to BellSouth at no charge the high frequency spectrum on UNE-P for purposes of enabling BellSouth to provision DSL transport on the same loop as the UNE-P based voice service

- 2.13.5 When BellSouth provides tariffed DSL transport over Cinergy UNE-P, BellSouth shall have the right, at no charge, to access the entire loop for purposes of troubleshooting DSL-related troubles.
- 2.13.6 BellSouth shall not be obligated to provide tariffed DSL transport in accordance with this Section 2.13.5 until completion of the modification of systems and processes that will enable BellSouth to qualify Cinergy UNE-P lines for DSL as well as maintain and repair such DSL on Cinergy UNE-P lines. Until such time as BellSouth completes the aforementioned modification of systems and processes, BellSouth agrees to provide to Cinergy Communications wholesale DSL transport service over resale lines on the following conditions: (1) the underlying resale line and its features shall be provided by BellSouth to Cinergy Communications at the rate that Cinergy Communications normally pays for a UNE-P loop/port combination in the pertinent UNE Zone, specifically excluding subscriber line charges, and other charges normally associated with resale; (2) BellSouth shall bill and collect the access or other third party charges applicable to such lines, and shall remit to Cinergy monthly, as a surrogate for such access charges, an amount determined in accordance with the formula set forth in Section 2.13.6.1 below; (3) because BellSouth cannot provide hunting between resale and UNE-P lines, any other lines of the end-user served by Cinergy Communications shall also be converted to resale at no charge upon submission of an LSR for such conversion and provided pursuant to (1) and (2) above unless and until BellSouth agrees to provide hunting between resale and UNE-P platforms; and (4) once the aforementioned modification of systems and process is completed, BellSouth agrees to convert all end-user lines affected by this section to UNE-P at no charge upon Cinergy Communications' submission of an executable LSR for such conversion.
- 2.13.6.1 The parties agree that the amount payable to Cinergy as a surrogate for access charges in accordance with Section 2.13.6 above shall be determined by multiplying the average number of Cinergy resale lines with DSL service, and those lines included in a hunt group with such DSL resale lines in accordance with subsection 3 of Section 2.13.6 above, for the most recent three (3) billing cycles preceding the date of this agreement by \$12.00 per line. Such rate is based upon Cinergy's estimate of its access charges, including subscriber line charges, presubscribed interexchange carrier charges, and usage charges, on a per line basis. Within sixty (60) days following the date of this Agreement and upon BellSouth's request, the parties agree to true up this amount to conform with the average per line access charges Cinergy collects on its UNE-P lines. Cinergy shall provide supporting documentation to justify the true up amount.

- 2.13.6.2 The Parties agree that subject to Section 2.13.6.1, the rates charged pursuant to Section 2.13.6 above are not subject to true-up regardless of appeal or change in law. Any change to these rates or to the provisions of Section 2.13 et seq. shall be prospective only in the event of a change in law as described in the General Terms and Conditions of this Agreement.
- 2.13.7 Cinergy Communications shall provide BellSouth with all current pertinent customer information necessary for BellSouth to comply with this section. Cinergy Communications authorizes BellSouth to access customer information on BellSouth systems as necessary for BellSouth to comply with this section. BellSouth shall provide Cinergy Communications with all current pertinent loop information necessary for Cinergy Communications to provide DSL over UNE-P, including but not limited to, loop qualification information for UNE-P lines.
- 2.13.8 If a request is made for DSL on an existing Cinergy Communications UNE-P line, Cinergy shall cooperate with BellSouth in an effort to determine loop make-up and qualification status. The parties shall mutually agree on a procedure and shall reduce same in writing.

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
ITC^DELTACOM COMMUNICATIONS, INC. D/B/A ITC^DELTACOM  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED JANUARY 31, 2002**

Pursuant to this Amendment, (the "Amendment"), ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom ("ITC^DeltaCom"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated January 31, 2002 ("Agreement").

WHEREAS, BellSouth and ITC^DeltaCom entered into the Agreement on January 31, 2002, and;

WHEREAS, The Parties desire to add provisions to meet the requirements of the Louisiana Public Service Commission Order in Docket #R-26173,

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to add a new Section 2.4 to Attachment 2 of the Agreement, titled Provisioning of DSL over UNE-P and UNE Loops as set forth below:

**2.4 Provisioning of DSL over UNE-P and UNE Loops**

- 2.4.1 In Louisiana, in order to comply with the Louisiana Public Service Commission's Order in Docket No. R-26713, and notwithstanding any contrary provisions in this Agreement, BellSouth Tariff F.C.C. Number 1, or any other agreements or tariffs of BellSouth, BellSouth shall continue to provide BellSouth @ FastAccess® Internet service ("FastAccess"), or wholesale Low Speed DSL ("wholesale ADSL") to the end-user who obtains voice service from ITC^DeltaCom over UNE-P and UNE loops.
- 2.4.2 If ITC^DeltaCom acquires the retail voice service on a UNE-P basis for an end-user served by BellSouth where the end-user subscribes to FastAccess, or wholesale ADSL at the time of such acquisition and ITC^DeltaCom's voice end-user desires BellSouth to continue to provide FastAccess to the end-user or wholesale ADSL to the end-user's ISP and has granted permission to ITC^DeltaCom to request on the end-user's behalf that FastAccess or wholesale ADSL continue to be provided, ITC^DeltaCom will follow the Local Ordering Handbook guidelines when ordering the UNE-P service. By allowing the ADL++ to remain on the line, ITC^DeltaCom grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL.

- 2.4.3 If ITC^DeltaCom wishes BellSouth to provide FastAccess or wholesale ADSL on the high frequency portion of a loop to a ITC^DeltaCom end-user served by UNE-P, and the end-user has granted permission to ITC^DeltaCom to request on the end-user's behalf that FastAccess or wholesale ADSL be provided, ITC^DeltaCom will include the UNE-P telephone number and ADL++ on the FastAccess or wholesale Low Speed DSL order for the UNE-P account. By including this ADL++ on the FastAccess or wholesale Low Speed DSL order, ITC^DeltaCom grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL. This assumes that the existing loop will qualify for FastAccess or wholesale ADSL. If the loop does not qualify for FastAccess or wholesale ADSL, FastAccess or wholesale ADSL will not be available for that end-user.
- 2.4.4 If ITC^DeltaCom acquires the voice and data services on a UNE loop basis for an end-user currently served by BellSouth, where the end-user subscribes to BellSouth FastAccess or has DSL service from an ISP that uses wholesale ADSL, and ITC^DeltaCom desires a seamless transition of the BellSouth voice and data services to the voice and data services of the CLEC, then ITC^DeltaCom shall order a UNE loop with the Order Coordination (OC) feature. The OC feature allows for a "hot cut" from the end user's existing service to the CLEC's UNE loop in a coordinated manner so that the required interruption of the end user's voice and data services are limited to a 15 minute window. Some UNE loops include the OC feature as a standard function that is included in the non-recurring charge of the loop itself, and other loops offer OC as separate feature with an additional charge. Furthermore, the CLEC may also order the Order Coordination - Time Specific (OC-TS) feature. The OC-TS feature allows the CLEC to specify the time in which the "hot-cut" takes place. OC-TS is a chargeable option on all loop types. In all cases where the CLEC desires a seamless transition for the end-user, the CLEC is responsible for ensuring that its dial tone and data service is available on its specified collocation cross-connect prior to the conversion time.
2. The Parties agree to add new ADL++ USOCs to Table 1 UNE rates of Attachment 11 with the ADL++ USOCs as set forth in Exhibit 1 of this Amendment, attached hereto and incorporated herein by this reference.
3. This Agreement shall be deemed effective June 24, 2003.
4. All of the other provisions of the Agreement, dated January 31, 2002, shall remain in full force and effect.
5. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

**Amendment to the Agreement  
Between  
ITC^DeltaCom Communications, Inc.  
d/b/a ITC^DELTACOM  
and  
BellSouth Telecommunications, Inc.  
Dated January 31, 2002**

Pursuant to this Amendment, (the "Amendment"), ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom (ITC^DeltaCom), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated January 31, 2002 ("Agreement") to be effective upon date of the last signature executing the Amendment.

WHEREAS, BellSouth and ITC^DeltaCom entered into the Agreement on January 31, 2002, and,

WHEREAS, ITC^DeltaCom has requested that BellSouth make available Section 2.10.1 in Attachment 2 of the Cinergy Communications Company's Interconnection Agreement executed between BellSouth and Cinergy Communications Company dated March 20, 2003, for the state of Kentucky.

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. ITC^DeltaCom and BellSouth shall adopt Section 2 10 1 in Attachment 2 of the Cinergy Communications Company's Interconnection agreement dated March 20, 2003.
2. The Parties agree that the adopted provision will be added to Attachment 2, Section 2, as Section 2.4.5 of ITC^DeltaCom's Interconnection Agreement as set forth in Exhibit 1, attached hereto and incorporated herein by this reference.
3. This Adoption shall expire on June 30, 2003, in accordance with Section 2 of the General Terms and Conditions of the Interconnection Agreement between BellSouth and ITC^DeltaCom.
4. All of the other provisions of the Agreement, dated January 31, 2002, shall remain in full force and effect.
5. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

- 2.4.5 For purposes of this Section 2.4.5, the term “DSL,” “DSL transport,” or “DSL Transport Services” shall mean that DSL transport service in the BellSouth F.C.C. Number 1 tariff in effect as of, July 12, 2002, the date of the Kentucky Public Service Commission’s Order in Case No. 2001-00432. In order to comply with the Order, BellSouth shall not refuse to provide any DSL transport service to a network service provider pursuant to a request from such network service provider who serves, or desires to serve, an end-user that receives UNE-P based voice services from Cinergy Communications. However, BellSouth shall have no obligation to provide DSL transport on any loop that is not qualified for DSL, provided that BellSouth shall not make a change to any loop so as to make it not qualify for DSL on the basis of that such loop is being converted to UNE-P, rather than on the basis of architectural, mechanical, or physical limitations.
- 2.4.5.1 The Order in is predicated upon the ability of customers of Cinergy Communications to receive wholesale ADSL transport at the same price it was available pursuant to Bellsouth Tariff F.C.C. Number 1 on the date of that Order. In the event this offering is no longer available for any reason, BellSouth agrees to provide to Cinergy Communications a wholesale ADSL transport product for the duration of this interconnection agreement on the same pricing, terms and conditions as those in the BellSouth Tariff F.C.C. Number 1 as of the date of the Order subject to section 2.4.5 above. The terms and prices of BellSouth Tariff F.C.C. Number 1 as it existed on the date of the Order are incorporated herein by reference as necessary to comply with this section.
- 2.4 5.2 Notwithstanding the foregoing, BellSouth shall have no obligation to provide its retail, DSL-based high speed Internet access service, currently known as BellSouth® FastAccess® DSL service, to an end-user that receives UNE-P based voice services from Cinergy. To the extent BellSouth chooses to deny FastAccess to an end user, BellSouth shall not seek any termination penalties against, or in any other fashion seek to penalize, any such end-user that Cinergy identifies to BellSouth pursuant to a process to be agreed upon and reduced to writing. BellSouth shall also notify the aforementioned end-user at least ten (10) days prior to discontinuing its FastAccess service.
- 2.4.5.3 Cinergy shall make available to BellSouth at no charge the high frequency spectrum on UNE-P for purposes of enabling BellSouth to provision DSL transport on the same loop as the UNE-P based voice service.

## Exhibit 1

- 2.4.5.4 When BellSouth provides tariffed DSL transport over Cinergy UNE-P, BellSouth shall have the right, at no charge, to access the entire loop for purposes of troubleshooting DSL-related troubles.
- 2.4.5.5 BellSouth shall not be obligated to provide tariffed DSL transport in accordance with this Section 2.4.5 until completion of the modification of systems and processes that will enable BellSouth to qualify Cinergy UNE-P lines for DSL as well as maintain and repair such DSL on Cinergy UNE-P lines. Until such time as BellSouth completes the aforementioned modification of systems and processes, BellSouth agrees to provide to Cinergy Communications wholesale DSL transport service over resale lines on the following conditions: (1) the underlying resale line and its features shall be provided by BellSouth to Cinergy Communications at the rate that Cinergy Communications normally pays for a UNE-P loop/port combination in the pertinent UNE Zone, specifically excluding subscriber line charges, and other charges normally associated with resale; (2) BellSouth shall bill and collect the access or other third party charges applicable to such lines, and shall remit to Cinergy monthly, as a surrogate for such access charges, an amount determined in accordance with the formula set forth in Section 2.4.5.5.1 below; (3) because BellSouth cannot provide hunting between resale and UNE-P lines, any other lines of the end-user served by Cinergy Communications shall also be converted to resale at no charge upon submission of an LSR for such conversion and provided pursuant to (1) and (2) above unless and until BellSouth agrees to provide hunting between resale and UNE-P platforms; and (4) once the aforementioned modification of systems and process is completed, BellSouth agrees to convert all end-user lines affected by this section to UNE-P at no charge upon Cinergy Communications' submission of an executable LSR for such conversion.
- 2.4.5.5.1 The parties agree that the amount payable to Cinergy as a surrogate for access charges in accordance with Section 2.4.5.5 above shall be determined by multiplying the average number of Cinergy resale lines with DSL service, and those lines included in a hunt group with such DSL resale lines in accordance with subsection 3 of Section 2.4.5.5 above, for the most recent three (3) billing cycles preceding the date of this agreement by \$12.00 per line. Such rate is based upon Cinergy's estimate of its access charges, including subscriber line charges, presubscribed interexchange carrier charges, and usage charges, on a per line basis. Within sixty (60) days following the date of this Agreement and upon BellSouth's request, the parties agree to true up this amount to conform with the average per line access charges Cinergy collects on its UNE-P lines. Cinergy shall provide supporting documentation to justify the true up amount.



## **Exhibit 1**

- 2.4.5.5.2      The Parties agree that subject to Section 2.4.5.5.1, the rates charged pursuant to Section 2.4.5.5 above are not subject to true-up regardless of appeal or change in law. Any change to these rates or to the provisions of Section 2.4.5 et seq. shall be prospective only in the event of a change in law as described in the General Terms and Conditions of this Agreement.
- 2.4.5.6      Cinergy Communications shall provide BellSouth with all current pertinent customer information necessary for BellSouth to comply with this section. Cinergy Communications authorizes BellSouth to access customer information on BellSouth systems as necessary for BellSouth to comply with this section. BellSouth shall provide Cinergy Communications with all current pertinent loop information necessary for Cinergy Communications to provide DSL over UNE-P, including but not limited to, loop qualification information for UNE-P lines.
- 2.4.5.7      If a request is made for DSL on an existing Cinergy Communications UNE-P line, Cinergy shall cooperate with BellSouth in an effort to determine loop make-up and qualification status. The parties shall mutually agree on a procedure and shall reduce same in writing.

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
MCIMETRO ACCESS TRANSMISSION SERVICES, L.L.C.  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED NOVEMBER 12, 2001**

Pursuant to this Amendment, (the "Amendment"), MCImetro Access Transmission Services, L L C. ("MCIm"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that Georgia certain Interconnection Agreement between the Parties dated November 12, 2001 ("Agreement")

WHEREAS, the Parties desire to add provisions to the Agreement consistent with the obligations of the Georgia Public Service Commission Order dated November 19, 2003 in Docket # 11901-U (the "Commission Order").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. For the purposes of satisfying the obligations set forth in the Commission Order, the Parties hereby add a new Section 2.12 to Attachment 3 of the Agreement, titled Provisioning of DSL over UNE-P as set forth below:

**2.12 Provisioning of DSL over UNE-P in Georgia**

- 2.12.1 In Georgia, notwithstanding any contrary provisions in this Agreement, BellSouth Tariff FCC No. 1, or any other agreements or tariffs of BellSouth, BellSouth shall have the following duties:

2.12.1.1 When an existing end user of BellSouth® FastAccess® DSL or BellSouth® FastAccess® DSL Lite (collectively "FastAccess") migrates from BellSouth voice to UNE-P purchased by MCIm, BellSouth shall continue to provide FastAccess on such UNE-P

2.12.1.2 When an end user who is obtaining voice service from MCIm on UNE-P requests and otherwise qualifies for FastAccess, BellSouth shall provide FastAccess over MCIm's UNE-P.

2.12.1.3 When a network service provider is providing high speed Internet service to an end user using DSL from BellSouth FCC Tariff No. 1, Section 28.2.1(C)(1) or (C)(8) ("Tariffed DSL"), and the end user migrates from BellSouth voice to UNE-P purchased by MCIm, BellSouth shall continue to provide DSL on such UNE-P

2.12.1.4 When a network service provider requests Tariffed DSL on UNE-P purchased by MCIm for the purpose of providing a high speed Internet service to an end user, and the line otherwise

qualifies for Tariffed DSL, BellSouth shall provide Tariffed DSL over MCI's UNE-P.

- 2.12.2 BellSouth shall be permitted to terminate FastAccess for non-payment or if the end user violates the end user service agreement or acceptable use policy, and shall be permitted to terminate DSL for non-payment or if the network service provider otherwise violates any provision of BellSouth FCC Tariff No. 1
- 2.12.3 MCI grants BellSouth permission to use the high frequency spectrum of a UNE-P loop without charge to BellSouth for the provision of FastAccess and/or Tariffed DSL. BellSouth shall be permitted to provision, test and maintain FastAccess and/or Tariffed DSL on such high frequency spectrum.
- 2.12.4 MCI will follow the applicable sections of Attachment 8-Business Process Requirements when ordering the UNE-P Service.
- 2 The Parties hereby add new ADL++ USOCs to Table 1 of Attachment 1 UNE rates with the ADL++ USOCs as set forth in Exhibit 1 of this Amendment, attached hereto and incorporated herein by this reference
- 3. This Agreement shall be deemed effective thirty (30) calendar days following the date of the last signature of both Parties ("Effective Date").
- 4. All of the other provisions of the Agreement shall remain in full force and effect
- 5. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996

**By and Between**

**BellSouth Telecommunications, Inc.**

**And**

**ITC^DeltaCom Communications, Inc.  
d/b/a ITC^DeltaCom d/b/a Grapevine**

- 8.2 Notwithstanding any contrary provisions in this Agreement, BellSouth Tariff FCC No. 1, or any other agreements or tariffs of BellSouth, BellSouth shall have the following duties:
- 8.2.4.1 When an existing end user of BellSouth® FastAccess® DSL, or BellSouth® FastAccess® DSL Lite (collectively "FastAccess") migrates from BellSouth voice to UNE-P purchased by ITC^DeltaCom, BellSouth shall continue to provide FastAccess on such UNE-P.
- 8.2.4.1.1 When an end user who is obtaining voice service from ITC^DeltaCom on UNE-P requests and otherwise qualifies for FastAccess, BellSouth shall provide FastAccess over ITC^DeltaCom's UNE-P.
- 8.2.4.1.2 When a network service provider is providing high speed Internet service to an end user using DSL from BellSouth FCC Tariff No. 1, Section 28.2(C)(1) or (C)(8) ("Tariffed DSL"), and the end user migrates from BellSouth voice to UNE-P purchased by ITC^DeltaCom, BellSouth shall continue to provide DSL on such UNE-P.
- 8.2.4.1.3 When a network service provider requests Tariffed DSL on UNE-P purchased by ITC^DeltaCom for the purpose of providing a high speed Internet service to an end user, and the line otherwise qualifies for Tariffed DSL, BellSouth shall provide Tariffed DSL over ITC^DeltaCom's UNE-P.
- 8.2.4.2 BellSouth shall be permitted to terminate FastAccess for non-payment or if the end user violates the end user service agreement of acceptable use policy, and shall be permitted to terminate DSL for non-payment or if the network service provider otherwise violates any provision of BellSouth FCC Tariff No. 1.
- 8.2.4.3 ITC^DeltaCom grants BellSouth permission to use the high frequency spectrum of a UNE-P loop without charge to BellSouth for the provision of FastAccess and/or Tariffed DSL. BellSouth shall be permitted to provision, test and maintain FastAccess and/or Tariffed DSL on such high frequency spectrum.
- 8.2.4.4 The ADL++ USOCs associated with the provisioning of FastAccess DSL are reflected in Exhibit D of this Attachment.

## **9.0 High Frequency Spectrum Network Elements**

BellSouth shall provide High Frequency Spectrum Network Elements pursuant to Exhibit C of this Attachment.

## **10. Switching**

All of the negotiated rates, terms and conditions set forth in this Section pertain to the provision of local and tandem switching.

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
BELLSOUTH TELECOMMUNICATIONS, INC.  
AND  
THE OTHER PHONE COMPANY, INC. D/B/A ACCESS ONE COMMUNICATIONS,  
THE OTHER PHONE COMPANY, INC. D/B/A TALK AMERICA INC. (NOT IN FLORIDA),  
AND  
TALK AMERICA INC.**

**DATED JUNE 12, 2002**

Pursuant to this Amendment, (the "Amendment"), BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation, and The Other Phone Company, Inc. d/b/a Access One Communications, a Florida corporation, The Other Phone Company, Inc. d/b/a Talk America Inc. (NOT in Florida), a Florida corporation, and Talk America Inc., a Pennsylvania corporation ("collectively referred to as "Talk America"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated June 12, 2002 ("Talk America Agreement").

WHEREAS, BellSouth and Talk America entered into the Agreement on June 12, 2002, and;

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, section 252(i) of the Act requires BellSouth to make available any interconnection, service, or network element provided under an agreement approved by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety; and

WHEREAS, Talk America has requested that BellSouth make available Section 8.2 in Attachment 2 of the ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine ("ITC^DeltaCom") Agreement executed between BellSouth and ITC^DeltaCom dated August 9, 2004, for the state of Georgia ("ITC^DeltaCom Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Talk America and BellSouth shall adopt Section 8.2-8.2.4.3 in Attachment 2 of the ITC^DeltaCom Interconnection Agreement dated August 9, 2004, for the state of Georgia.
2. The Parties agree that the adopted provision will be added to Attachment 2, Section 2, as Section 2.10, of Talk America's Agreement as set forth in Exhibit 1 attached hereto and incorporated herein by this reference.

3. The Parties hereby add new ADL++ USOCs to Exhibit B of Attachment 2 with the ADL++ USOCs as set forth in Exhibit 2 of this Amendment, attached hereto and incorporated herein by reference
4. The rates, terms and conditions of this Amendment will expire on June 11, 2005 in accordance with Section 2 of the General Terms and Conditions of the Talk America Agreement.
5. The term of this Amendment shall be effective ten (10) days from the date of last signature.
6. All of the other provisions of the Talk America Agreement, dated June 12, 2002, shall remain in full force and effect.
7. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996

## EXHIBIT 1

- 8.2 Notwithstanding any contrary provisions in this Agreement, BellSouth Tariff FCC No. 1, or any other agreements or tariffs of BellSouth, BellSouth shall have the following duties
- 8.2.4.1 When an existing end user of BellSouth® FastAccess® DSL or BellSouth® FastAccess® DSL Lite (collectively “FastAccess”) migrates from BellSouth voice to UNE-P purchased by ITC^DeltaCom, BellSouth shall continue to provide FastAccess on such UNE-P
- 8.2.4.1.1 When an end user who is obtaining voice service from ITC^DeltaCom on UNE-p requests and otherwise qualifies for FastAccess, BellSouth shall provide FastAccess over ITC^DeltaCom’s UNE-P.
- 8.2.4.1.2 When a network service provider is providing high speed Internet service to an end user using DSL from BellSouth FCC Tariff No. 1, Section 28.2(C)(1) or (C)(8) (“Tariffed DSL”), and the end user migrates from BellSouth voice to UNE-P purchased by ITC^DeltaCom, BellSouth shall continue to provide DSL on such UNE-P.
- 8.2.4.1.3 When a network service provider requests Tariffed DSL on UNE-P purchased by ITC^DeltaCom for the purpose of providing a high speed Internet service to an end user, and the line otherwise qualifies for Tariffed DSL, BellSouth shall provide Tariffed DSL over ITC^DeltaCom’s UNE-P
- 8.2.4.2 BellSouth shall be permitted to terminate FastAccess for non-payment or if the end user violates the end user service agreement of acceptable use policy, and shall be permitted to terminate DSL for non-payment or if the network service provider otherwise violates any provision of BellSouth FCC Tariff No. 1.
- 8.2.4.3 ITC^DeltaCom grants BellSouth permission to use the high frequency spectrum of a UNE-P loop without charge to BellSouth for the provision of FastAccess and/or Tariffed DSL. BellSouth shall be permitted to provision, test and maintain FastAccess and/or Tariffed DSL on such high frequency spectrum



**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
FLORIDA DIGITAL NETWORK, INC.  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED FEBRUARY 5, 2003**

Pursuant to this Amendment, (the "Amendment"), Florida Digital Network, Inc ("FDN"), and BellSouth Telecommunications, Inc ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated February 5, 2003 ("Agreement") to be effective on the date of the last signature executing the Amendment.

WHEREAS, BellSouth and FDN entered into the Agreement on February 5, 2003 and;

WHEREAS, The Florida Public Service Commission has issued it's order in Docket 010098-TP resolving the parties disputed language for the BellSouth/Florida Digital Network Interconnection Agreement;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

- 1 The Parties agree to add a new Section 2.10 to Attachment 2 of the Agreement, titled Continued Provision of FastAccess to FDN End User. Section 2.10 is set forth in Exhibit 1 of this Amendment, attached hereto and incorporated herein by this reference
2. This Amendment shall be deemed effective on the date of the last signature of both Parties ("Effective Date").
3. All of the other provisions of the Agreement, dated February 5, 2003 shall remain in full force and effect.
4. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

## Exhibit 1

**2.10            Continued Provision of FastAccess to FDN End Users**

- 2.10.1.        In order to comply with the Florida Public Service Commission's Order in Docket No. 010098-TP, and notwithstanding any contrary provisions in this Agreement, BellSouth Tariff F.C.C. Number 1, or any other agreements or tariffs of BellSouth, in cases in which BellSouth provides BellSouth® FastAccess® Internet Service ("FastAccess") to an end-user and FDN submits an authorized request to provide voice service to that end-user, BellSouth shall continue to provide FastAccess to the end-user who obtains voice service from FDN over UNE loops.
- 2 10.1.1      BellSouth may not evade any of its obligations under this subsection 2 10 by offering or providing any of the services or component services under this subsection through any affiliate, including, but not limited to, BellSouth net, Inc. or successor by corporate merger.
- 2.10.1.2      Regardless of how BellSouth provisions its FastAccess to an end-user, when an end-user switches to FDN voice service, BellSouth's FastAccess will not be terminated, suspended or interrupted, except as may be expressly provided for herein, and BellSouth's continuation of its FastAccess to the end-user switching to FDN voice service shall be a seamless or transparent transition for the end user such that there shall be no more than a momentary disruption of FastAccess and voice services.
- 2 10 1.3      Where BellSouth's FastAccess could be provisioned over the high-frequency portion of a loop coexistent with FDN circuit-switched voice services on the same loop, BellSouth may elect to maintain the BellSouth FastAccess on the same loop such that the FastAccess is not altered when the end-user switches to FDN's voice service.
- 2.10.1.4      BellSouth may satisfy its obligations under this Section 2.10 by providing FastAccess on a BellSouth owned and maintained loop, ("Standalone FastAccess"), that is separate and distinct from the line FDN uses for voice services. Where feasible, and where a loop is available for FDN voice services that satisfies all of the standards set forth in this Agreement, BellSouth may elect to maintain FastAccess on the extant loop and FDN voice services will be provisioned over a second loop.
- 2 10.1.5      BellSouth may not impose an additional charge to the end-user associated with the provision of FastAccess on a second loop. Notwithstanding the foregoing, the end-user shall not be entitled to any discounts on FastAccess associated with the purchase of other BellSouth products, e.g., the Complete Choice discount.
- 2.10 1 6      BellSouth may request that the End User's FastAccess service be billed to a credit card. If the End User does not provide a credit card number to BellSouth for billing purposes, the parties shall cooperatively determine an alternative means to bill the End User. If the End User refuses to allow BellSouth access to his premises where necessary to perform any re-wiring, BellSouth may discontinue the provision of FastAccess service to the End User.

- 2.10.1.7 If the Parties are unable to reach agreement on an alternative means to billing the end user, the Parties may petition the Commission for relief as appropriate regarding the dispute.
- 2.10.1.8 In implementing the Commission's Order in Docket No. 010098-TP, BellSouth shall not create any additional barriers to FDN's ability to compete in the local exchange services market.
- 2.10.1.9 Nothing in this Section 2.10 shall require BellSouth to continue providing FastAccess to an end-user who fails to pay all charges associated with FastAccess or otherwise fails to comply with the end-user's Service Agreement with BellSouth or the applicable Acceptable Use policies for FastAccess.
- 2.10.1.10 In the event BellSouth elects to comply with this Section 2.10 by providing FastAccess on an FDN UNE Loop, FDN shall make available to BellSouth at no charge the high frequency spectrum on such UNE Loop for purposes of providing the underlying DSL transport.
- 2.10.2 **Provisioning**
- 2.10.2.1 FDN and BellSouth shall each establish a single point of contact ("SPOC") for purposes of the provision of FastAccess pursuant to this Section 2.10.
- 2.10.2.2 When FDN submits an LSR for a UNE loop, and there is a DSL USOC on the end-user's service record, the LCSC will auto-clarify the order.
- 2.10.2.3 Upon receiving the auto-clarified order, FDN shall notify the BellSouth SPOC, and the BellSouth SPOC shall determine whether the end-user is a FastAccess customer.
- 2.10.2.4 FDN and BellSouth will develop processes to promptly correct problems with or disconnections of FastAccess service to FDN voice end users.
- 2.10.2.5 If the end user does not have FastAccess but has some other DSL service, BellSouth shall remove the DSL service associated USOC and process the FDN LSR for the UNE loop.
- 2.10.2.6 If the end user receives FastAccess service, FDN shall forward to the SPOC end user contact information (i.e. telephone number or email address) in order for BellSouth to perform its obligations under this Section 2.10. FDN may include such contact information on the LSR. After receipt of contact information from FDN, BellSouth shall have three days to make the election as to which line FastAccess service will be provisioned on as set forth in 2.10.2.7 and to notify FDN of that election. If BellSouth contacts the end user during this process, BellSouth may do so only to validate the end user's current and future FastAccess services and facilities. During such contact, BellSouth will not engage in any winback or retention efforts, and BellSouth will refer the end user to FDN to answer any questions regarding the end user's FDN services.
- 2.10.2.7 After election by BellSouth as to which line FastAccess will be provisioned on (either the existing loop, or on a second facility) FDN will submit a revised LSR for the

conversion of the voice service to a UNE loop. If BellSouth elects to move the FastAccess to a new Standalone loop, FDN will submit an LSR with a due date 14 calendar days from submission to allow BellSouth sufficient time to transition the FastAccess service to the second line. If BellSouth elects to keep the FastAccess service on the current facilities and provision FDN voice services on the same or separate facilities, FDN will submit a revised LSR for voice service on such facilities using standard processes and intervals, and allow the FastAccess service to remain on the current facilities.

- 2.10.2.8 If BellSouth believes that it is important and correct to continue to provide Fast Access over a separate facility and such facilities are not available and the parties cannot reach an agreement about how the Fast Access would be provisioned, the Parties can file a petition with the Commission seeking relief as appropriate.
- 2.10.2.9 FDN authorizes BellSouth to access the entire UNE loop for testing purposes.
- 2.10.2.10 FDN and BellSouth agree that after the initial 90 days (and every 90 days thereafter) of provisioning FastAccess service in accordance with this Section 2.10, FDN and BellSouth will meet to discuss and negotiate in good faith any means for improving and streamlining the provisioning process.

AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
ITC^DELTACOM COMMUNICATIONS, INC. D/B/A ITC^DELTACOM  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC  
DATED FEBRUARY 9, 2001

Pursuant to this Amendment, (the "Amendment"), ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom, ("ITC^DeltaCom") and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated February 9, 2001, ("Agreement").

WHEREAS, BellSouth and ITC^DeltaCom entered into the Agreement on February 9, 2001, and;

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, section 252(i) of the Act requires BellSouth to make available any interconnection, service, or network element provided under an agreement approved by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety, and

WHEREAS, ITC^DeltaCom has requested that BellSouth make available Section 2.16.7 in Attachment 2 of the Supra Telecommunications and Information Systems, Inc.'s Interconnection Agreement executed between BellSouth and Supra Telecommunications and Information Systems, Inc. dated July 15, 2002 for the state(s) of Florida.

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, ITC^DeltaCom and BellSouth hereby agree as follows:

1. ITC^DeltaCom and BellSouth shall adopt Section 2.16.7 in Attachment 2 of the Supra Telecommunications and Information Systems, Inc.'s Interconnection Agreement dated July 15, 2002
2. The Parties agree that the adopted provision will be added to Attachment 2, Section 8 of ITC^DeltaCom Interconnection Agreement as follows:

8.6.3.7 Where a BellSouth voice customer who is subscribing to BellSouth FastAccess Internet Service converts its voice service to ITC^DeltaCom utilizing a UNE-P line, BellSouth will continue to provide FastAccess service to that end user.

3. The term of this Agreement shall be effective upon the date of last signature, and shall expire on December 31, 2002, in accordance with Section 2 of the General Terms and Conditions of the Interconnection Agreement between BellSouth and ITC^DeltaCom.

4. All of the other provisions of the Agreement, dated February 9, 2001, shall remain in full force and effect.
5. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

ITC^DeltaCom Communications, Inc.  
d/b/a ITC^DeltaCom

By: Signature on File

Name Jerry Watts

Title Vice President

Date 11/21/02

BellSouth Telecommunications, Inc.

By: Signature on File

Patrick Finlen  
Name. for Elizabeth R. A. Shiroishi

Title: Assistant Director

Date. 12/03/02

SIXTH AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
TCG SOUTH FLORIDA  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
FLORIDA  
DATED OCTOBER 26, 2001

Pursuant to this Amendment, (the "Amendment"), TCG South Florida ("TCG"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated October 26, 2001, ("Agreement").

WHEREAS, BellSouth and TCG entered into the Agreement on October 26, 2001, and;

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, section 252(i) of the Act requires BellSouth to make available any interconnection, service, or network element provided under an agreement approved by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety; and

WHEREAS, TCG has requested that BellSouth make available Section 2.16.7 in Attachment 2 of the Supra Telecommunications and Information Systems, Inc.'s Interconnection Agreement executed between BellSouth and Supra Telecommunications and Information Systems, Inc. dated July 15, 2002 for the state(s) of Florida.

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, TCG and BellSouth hereby agree as follows:

1. TCG and BellSouth shall adopt Section 2.16.7 in Attachment 2 of the Supra Telecommunications and Information Systems, Inc.'s Interconnection Agreement dated July 15, 2002
2. The Parties agree that the adopted provision will be added to Attachment 2, Section 2 of TCG's Interconnection Agreement as follows.
  - 2.9.9 Where a BellSouth voice customer who is subscribing to BellSouth FastAccess Internet Service converts its voice service to AT&T utilizing a UNE-P line, BellSouth will continue to provide FastAccess service to that end user.
3. The term of this Agreement shall be effective upon the date of last signature, and shall expire on October 25, 2004, in accordance with Section 2 of the General Terms and Conditions of the Interconnection Agreement between BellSouth and TCG.



4. All of the other provisions of the Agreement, dated October 26, 2001, shall remain in full force and effect
5. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

TCG South Florida

By: Signature on file

Name: Bill C. Peacock

Director - Local Services &

Title: Access Management

Date: May 9, 2003

BellSouth Telecommunications, Inc.

By: Signature on file

Name: Elizabeth R. A. Shiroishi

Title: Director

Date: May 16, 2003

AGREEMENT

between

BellSouth Telecommunications, Inc

and

Supra Telecommunications and Information Systems, Inc.

Effective Date. July 15, 2002

- 2.16.5.2 2-wire voice grade DID port, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port
- 2 16 5.3 2-wire CENTREX port, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port
- 2.16 5.4 2-wire ISDN Basic Rate Interface, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 2.16.5.5 2-wire ISDN Primary Rate Interface, DS1 loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port
- 2.16.5.6 2-wire voice grade Coin port, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 2 16 5 7 4 wire DS1 Trunk port, DS1 Loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 2 16.5 8 4-wire DS1 Loop with normal serving wire center channelization interface, 2-wire voice grade ports (PBX), 2-wire DID ports, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.
- 2.16.6 BellSouth shall implement a Single "C" (Change) Order Process for provisioning UNE-P conversions.
- 2.16.7 Where a BellSouth voice customer who is subscribing to BellSouth FastAccess Internet service converts its voice service to Supra utilizing a UNE-P line, BellSouth will continue to provide Fast Access service to that end user.
- 2 17 Standards for Network Elements
- 2 17.1 1 BellSouth shall comply with the requirements set forth in the technical references, as well as any performance or other requirements

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
MCIMETRO ACCESS TRANSMISSION SERVICES LLC  
AND  
BELL SOUTH TELECOMMUNICATIONS, INC.  
DATED JUNE 17, 2002**

Pursuant to this Amendment, (the "Amendment"), MCImetro Access Transmission Services LLC ("MCIm"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Louisiana Interconnection Agreement between the Parties dated June 17, 2002 ("Agreement")

WHEREAS, BellSouth and MCIm entered into the Agreement on June 17, 2002, and,

WHEREAS The Parties desire to add provisions to meet the requirements of the Louisiana Public Service Commission Order in Docket #R-26173,

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows

- I The Parties agree to add a new Section 4.24 to Attachment 3 of the Agreement, titled Provisioning of DSL over UNE-P and UNE Loops as set forth below.

**4.24 Provisioning of DSL over UNE-P and UNE Loops**

4.24.1 In Louisiana, in order to comply with the Louisiana Public Service Commission's Order in Docket No. R-26713, and notwithstanding any contrary provisions in this Agreement, BellSouth Tariff F C C Number 1, or any other agreements or tariffs of BellSouth, BellSouth shall continue to provide BellSouth® FastAccess® Internet service ("FastAccess"), or wholesale Low Speed DSL ("wholesale ADSL") to the end-user who obtains voice service from MCIm over UNE-P and UNE loops

4.24.2 If MCIm acquires the retail voice service on a UNE-P basis for an end-user served by BellSouth where the end-user subscribes to FastAccess, or wholesale ADSL at the time of such acquisition and MCIm's voice end-user desires BellSouth to continue to provide FastAccess to the end-user or wholesale ADSL to the end-user's ISP and has granted permission to MCIm to request on the end-user's behalf that FastAccess or wholesale ADSL continue to be provided, MCIm will follow the Local Ordering Handbook guidelines when ordering the UNE-P service. By allowing the ADL++ to remain on the line, MCIm grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL

4 24 3 If MCI wishes BellSouth to provide FastAccess or wholesale ADSL on the high frequency portion of a loop to a MCI end-user served by UNE-P, and the end-user has granted permission to MCI to request on the end-user's behalf that FastAccess or wholesale ADSL be provided, MCI will include the UNE-P telephone number and ADL++ on the FastAccess or wholesale Low Speed DSL order for the UNE-P account. By including this ADL++ on the FastAccess or wholesale Low Speed DSL order, MCI grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL. This assumes that the existing loop will qualify for FastAccess or wholesale ADSL. If the loop does not qualify for FastAccess or wholesale ADSL, FastAccess or wholesale ADSL will not be available for that end-user.

4 24 4 If MCI acquires the voice and data services on a UNE loop basis for an end-user currently served by BellSouth, where the end-user subscribes to BellSouth FastAccess or has DSL service from an ISP that uses wholesale ADSL, and MCI desires a seamless transition of the BellSouth voice and data services to the voice and data services of the CLEC, then MCI shall order a UNE loop with the Order Coordination (OC) feature. The OC feature allows for a "hot cut" from the end user's existing service to the CLEC's UNE loop in a coordinated manner so that the required interruption of the end user's voice and data services are limited to a 15 minute window. Some UNE loops include the OC feature as a standard function that is included in the non-recurring charge of the loop itself, and other loops offer OC as separate feature with an additional charge. Furthermore, the CLEC may also order the Order Coordination - Time Specific (OC-TS) feature. The OC-TS feature allows the CLEC to specify the time in which the "hot-cut" takes place. OC-TS is a chargeable option on all loop types. In all cases where the CLEC desires a seamless transition for the end-user, the CLEC is responsible for ensuring that its dial tone and data service is available on its specified collocation cross-connect prior to the conversion time.

- 2 The Parties agree to add new ADL++ USOCs to Table 1 to Attachment 1 with the ADL++ USOCs as set forth in Exhibit 1 of this Amendment, attached hereto and incorporated herein by this reference.
- 3 This Agreement shall be deemed effective June 1, 2003 ("Effective Date").
4. All of the other provisions of the Agreement, dated June 17, 2002, shall remain in full force and effect.
- 5 Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
ADVANCED TEL, INC. D/B/A EATEL  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED FEBRUARY 5, 2002**

Pursuant to this Amendment, (the "Amendment"), Advanced Tel, Inc. d/b/a EATEL ("Advanced Tel"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated February 5, 2002 ("Agreement").

WHEREAS, BellSouth and Advanced Tel entered into the Agreement on February 5, 2002, and;

WHEREAS, the Parties desire to add provisions to meet the requirements of the Louisiana Public Service Commission Order in Docket #R-26173,

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to add a new Section 2.10 to Attachment 2 of the Agreement, titled Louisiana - Provisioning of DSL over UNE-P and UNE Loops as set forth below:

**2.10 Louisiana - Provisioning of DSL over UNE-P and UNE Loops**

2.10.1 In Louisiana, in order to comply with the Louisiana Public Service Commission's Order in Docket No. R-26713, and notwithstanding any contrary provisions in this Agreement, BellSouth Tariff F.C.C. Number 1, or any other agreements or tariffs of BellSouth, BellSouth shall continue to provide BellSouth ® FastAccess® Internet service ("FastAccess"), or wholesale Low Speed DSL ("wholesale ADSL") to the end-user who obtains voice service from Advanced Tel over UNE-P and UNE loops.

2.10.2 If Advanced Tel acquires the retail voice service on a UNE-P basis for an end-user served by BellSouth where the end-user subscribes to FastAccess, or wholesale ADSL at the time of such acquisition and Advanced Tel's voice end-user desires BellSouth to continue to provide FastAccess to the end-user or wholesale ADSL to the end-user's ISP and has granted permission to Advanced Tel to request on the end-user's behalf that FastAccess or wholesale ADSL continue to be provided, Advanced Tel will follow the Local Ordering Handbook guidelines when ordering the UNE-P service. By allowing the ADL++ to remain on the line, Advanced Tel grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL.

2.10.3 If Advanced Tel wishes BellSouth to provide FastAccess or wholesale ADSL on the high frequency portion of a loop to a Advanced Tel end-user served by UNE-P, and the end-user has granted permission to Advanced Tel to request on the end-user's behalf that FastAccess or wholesale ADSL be provided, Advanced Tel will include the UNE-P telephone number and ADL++ on the FastAccess or wholesale Low Speed DSL order for the UNE-P account. By including this ADL++ on the FastAccess or wholesale Low Speed DSL order, Advanced Tel grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL. This assumes that the existing loop will qualify for FastAccess or wholesale ADSL. If the loop does not qualify for FastAccess or wholesale ADSL, FastAccess or wholesale ADSL will not be available for that end-user.

2.10.4 If Advanced Tel acquires the voice and data services on a UNE loop basis for an end-user currently served by BellSouth, where the end-user subscribes to BellSouth FastAccess or has DSL service from an ISP that uses wholesale ADSL, and Advanced Tel desires a seamless transition of the BellSouth voice and data services to the voice and data services of the CLEC, then Advanced Tel shall order a UNE loop with the Order Coordination (OC) feature. The OC feature allows for a "hot cut" from the end user's existing service to the CLEC's UNE loop in a coordinated manner so that the required interruption of the end user's voice and data services are limited to a 15 minute window. Some UNE loops include the OC feature as a standard function that is included in the non-recurring charge of the loop itself, and other loops offer OC as separate feature with an additional charge. Furthermore, the CLEC may also order the Order Coordination - Time Specific (OC-TS) feature. The OC-TS feature allows the CLEC to specify the time in which the "hot-cut" takes place. OC-TS is a chargeable option on all loop types. In all cases where the CLEC desires a seamless transition for the end-user, the CLEC is responsible for ensuring that its dial tone and data service is available on its specified collocation cross-connect prior to the conversion time.

2. The Parties agree to add new ADL++ USOCs to Exhibit B rates to Attachment 2-UNEs with the ADL++ USOCs as set forth in Exhibit 1 of this Amendment, attached hereto and incorporated herein by this reference.
3. This Amendment shall be deemed effective June 1, 2003 ("Effective Date").
4. All of the other provisions of the Agreement, dated February 5, 2002, shall remain in full force and effect.
5. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

**INTERCONNECTION  
AGREEMENT  
BETWEEN  
BELLSOUTH TELECOMMUNICATIONS INC.  
AND  
ADVANCED TEL, INC. D/B/A EATEL**



- 2.9.3.2 Advanced Tel may reserve facilities for up to four (4) business days for each facility requested on a LMUSI from the time the LMU information is returned to Advanced Tel. During and prior to Advanced Tel placing an LSR, the reserved facilities are rendered unavailable to other customers, including BellSouth. If Advanced Tel does not submit an LSR for a UNE service on a reserved facility within the four-day reservation timeframe, the reservation of that spare facility will become invalid and the facility will be released.
- 2.9.3.3 Charges for preordering LMUSI are separate from any charges associated with ordering other services from BellSouth.
- 2.9.4 **Ordering of Other UNE Services**
- 2.9.4.1 All LSRs issued for reserved facilities shall reference the facility reservation number as provided by BellSouth. Advanced Tel will not be billed any additional LMU charges for the loop ordered on such LSR. If, however, Advanced Tel does not reserve facilities upon an initial LMUSI, Advanced Tel's placement of an order for an advanced data service type facility will incur the appropriate billing charges to include service inquiry and reservation per Exhibit B of this Attachment.
- 2.9.4.2 Where Advanced Tel has reserved multiple Loop facilities on a single reservation, Advanced Tel may not specify which facility shall be provisioned when submitting the LSR. For those occasions, BellSouth will assign to Advanced Tel, subject to availability, a facility that meets the BellSouth technical standards of the BellSouth type Loop as ordered by Advanced Tel. If the ordered Loop type is not available, Advanced Tel may utilize the Unbundled Loop Modification process or the Special Construction process, as applicable, to obtain the Loop type ordered.
- 2.10 **Louisiana - Provisioning of DSL over UNE-P and UNE Loops**
- 2.10.1 In Louisiana, in order to comply with the Louisiana Public Service Commission's Order in Docket No. R-26713, and notwithstanding any contrary provisions in this Agreement, BellSouth Tariff F.C.C. Number 1, or any other agreements or tariffs of BellSouth, BellSouth shall continue to provide BellSouth® FastAccess® Internet service ("FastAccess"), or wholesale Low Speed DSL ("wholesale ADSL") to the end-user who obtains voice service from Advanced Tel over UNE-P and UNE loops.
- 2.10.2 If Advanced Tel acquires the retail voice service on a UNE-P basis for an end-user served by BellSouth where the end-user subscribes to FastAccess, or wholesale ADSL at the time of such acquisition and Advanced Tel's voice end-user desires BellSouth to continue to provide FastAccess to the end-user or wholesale ADSL to the end-user's ISP and has granted permission to Advanced Tel to request on the end-user's behalf that FastAccess or wholesale ADSL continue to be provided, Advanced Tel will follow the Local Ordering Handbook guidelines when ordering

the UNE-P service. By allowing the ADL++ to remain on the line, Advanced Tel grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL.

- 2.10.3 If Advanced Tel wishes BellSouth to provide FastAccess or wholesale ADSL on the high frequency portion of a loop to a Advanced Tel end-user served by UNE-P, and the end-user has granted permission to Advanced Tel to request on the end-user's behalf that FastAccess or wholesale ADSL be provided, Advanced Tel will include the UNE-P telephone number and ADL++ on the FastAccess or wholesale Low Speed DSL order for the UNE-P account. By including this ADL++ on the FastAccess or wholesale Low Speed DSL order, Advanced Tel grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL. This assumes that the existing loop will qualify for FastAccess or wholesale ADSL. If the loop does not qualify for FastAccess or wholesale ADSL, FastAccess or wholesale ADSL will not be available for that end-user.
- 2.10.4 If Advanced Tel acquires the voice and data services on a UNE loop basis for an end-user currently served by BellSouth, where the end-user subscribes to BellSouth FastAccess or has DSL service from an ISP that uses wholesale ADSL, and Advanced Tel desires a seamless transition of the BellSouth voice and data services to the voice and data services of the CLEC, then Advanced Tel shall order a UNE loop with the Order Coordination (OC) feature. The OC feature allows for a "hot cut" from the end user's existing service to the CLEC's UNE loop in a coordinated manner so that the required interruption of the end user's voice and data services are limited to a 15 minute window. Some UNE loops include the OC feature as a standard function that is included in the non-recurring charge of the loop itself, and other loops offer OC as separate feature with an additional charge. Furthermore, the CLEC may also order the Order Coordination – Time Specific (OC-TS) feature. The OC-TS feature allows the CLEC to specify the time in which the "hot-cut" takes place. OC-TS is a chargeable option on all loop types. In all cases where the CLEC desires a seamless transition for the end-user, the CLEC is responsible for ensuring that its dial tone and data service is available on its specified collocation cross-connect prior to the conversion time.

### **3 High Frequency Spectrum Network Element**

#### **3.1 General**

- 3.1.1 BellSouth shall provide Advanced Tel access to the high frequency spectrum of the local loop as an unbundled network element only where BellSouth is the voice service provider to the end user at the rates set forth in this Attachment.

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
NETWORK TELEPHONE CORPORATION  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED JUNE 20, 2003**

Pursuant to this Amendment, (the "Amendment"), Network Telephone Corporation ("Network Telephone"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated June 20, 2003 ("Agreement").

WHEREAS, BellSouth and Network Telephone entered into the Agreement on June 20, 2003, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties desire to add provisions to meet the requirements of the Louisiana Public Service Commission Order in Docket #R-26173.
2. The Parties agree to add a new Section 2.10 to Attachment 2 of the Agreement, titled Provisioning of DSL over UNE-P and UNE Loops as set forth below:

**2.10 Provisioning of DSL over UNE-P and UNE Loops in Louisiana**

2.10.1 In Louisiana, in order to comply with the Louisiana Public Service Commission's Order in Docket No. R-26713, and notwithstanding any contrary provisions in this Agreement, BellSouth Tariff F.C.C. Number 1, or any other agreements or tariffs of BellSouth, BellSouth shall continue to provide BellSouth® FastAccess® Internet service ("FastAccess"), or wholesale Low Speed DSL ("wholesale ADSL") to the end-user who obtains voice service from Network Telephone over UNE-P and UNE loops.

2.10.2 If Network Telephone acquires the retail voice service on a UNE-P basis for an end-user served by BellSouth where the end-user subscribes to FastAccess, or wholesale ADSL at the time of such acquisition and Network Telephone's voice end-user desires BellSouth to continue to provide FastAccess to the end-user or wholesale ADSL to the end-user's ISP and has granted permission to Network Telephone to request on the end-user's behalf that FastAccess or wholesale ADSL continue to be provided, Network Telephone will follow the Local Ordering Handbook guidelines when ordering the UNE-P service. By allowing the ADL++ to remain on the line, Network Telephone grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL.

- 2.10.3 If Network Telephone wishes BellSouth to provide FastAccess or wholesale ADSL on the high frequency portion of a loop to a Network Telephone end-user served by UNE-P, and the end-user has granted permission to Network Telephone to request on the end-user's behalf that FastAccess or wholesale ADSL be provided, Network Telephone will include the UNE-P telephone number and ADL++ on the FastAccess or wholesale Low Speed DSL order for the UNE-P account. By including this ADL++ on the FastAccess or wholesale Low Speed DSL order, Network Telephone grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL. This assumes that the existing loop will qualify for FastAccess or wholesale ADSL. If the loop does not qualify for FastAccess or wholesale ADSL, FastAccess or wholesale ADSL will not be available for that end-user.
- 2.10.4 If Network Telephone acquires the voice and data services on a UNE loop basis for an end-user currently served by BellSouth, where the end-user subscribes to BellSouth FastAccess or has DSL service from an ISP that uses wholesale ADSL, and Network Telephone desires a seamless transition of the BellSouth voice and data services to the voice and data services of the CLEC, then Network Telephone shall order a UNE loop with the Order Coordination (OC) feature. The OC feature allows for a "hot cut" from the end user's existing service to the CLEC's UNE loop in a coordinated manner so that the required interruption of the end user's voice and data services are limited to a 15 minute window. Some UNE loops include the OC feature as a standard function that is included in the non-recurring charge of the loop itself, and other loops offer OC as separate feature with an additional charge. Furthermore, the CLEC may also order the Order Coordination – Time Specific (OC-TS) feature. The OC-TS feature allows the CLEC to specify the time in which the "hot-cut" takes place. OC-TS is a chargeable option on all loop types. In all cases where the CLEC desires a seamless transition for the end-user, the CLEC is responsible for ensuring that its dial tone and data service is available on its specified collocation cross-connect prior to the conversion time.
3. The Parties agree to add new ADL++ USOCs to Exhibit B rates to Attachment 2-UNEs with the ADL++ USOCs as set forth in Exhibit 1 of this Amendment, attached hereto and incorporated herein by this reference.
4. The Parties agree to add Virtual Collocation rates for Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina and Tennessee to Exhibit B of Attachment 4 as set forth in Exhibit 2 of this Amendment, attached hereto and incorporated herein by this reference.
5. The Parties agree to add Operator Service, Directory Assistance and Inward Operator Services rates for North Carolina to Exhibit B of Attachment 2, as set forth in Exhibit 3 of this Amendment, attached hereto and incorporated herein by this reference.
6. This Agreement shall be deemed effective June 20, 2003.

- 7 All of the other provisions of the Agreement, dated June 20, 2003, shall remain in full force and effect
8. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

**Interconnection Agreement**

**Between**

**BellSouth Telecommunications, Inc.**

**and**

**TLX Communications, Inc. d/b/a TelAmerica**

- 2.9.3.3 Charges for preordering LMUSI are separate from any charges associated with ordering other services from BellSouth.

2.9.4 **Ordering of Other UNE Services**

- 2.9.4.1 All LSRs issued for reserved facilities shall reference the facility reservation number as provided by BellSouth. TLX will not be billed any additional LMU charges for the loop ordered on such LSR. If, however, TLX does not reserve facilities upon an initial LMUSI, TLX's placement of an order for an advanced data service type facility will incur the appropriate billing charges to include service inquiry and reservation per Exhibit B of this Attachment.
- 2.9.4.2 Where TLX has reserved multiple Loop facilities on a single reservation, TLX may not specify which facility shall be provisioned when submitting the LSR. For those occasions, BellSouth will assign to TLX, subject to availability, a facility that meets the BellSouth technical standards of the BellSouth type Loop as ordered by TLX. If the ordered Loop type is not available, TLX may utilize the Unbundled Loop Modification process or the Special Construction process, as applicable, to obtain the Loop type ordered.

2.10 **Louisiana - Provisioning of DSL over UNE-P and UNE Loops**

- 2.10.1 In Louisiana, in order to comply with the Louisiana Public Service Commission's Order in Docket No. R-26713, and notwithstanding any contrary provisions in this Agreement, BellSouth Tariff F.C.C. Number 1, or any other agreements or tariffs of BellSouth, BellSouth shall continue to provide BellSouth® FastAccess® Internet service ("FastAccess"), or wholesale Low Speed DSL ("wholesale ADSL") to the end-user who obtains voice service from TLX over UNE-P and UNE loops.
- 2.10.2 If TLX acquires the retail voice service on a UNE-P basis for an end-user served by BellSouth where the end-user subscribes to FastAccess, or wholesale ADSL at the time of such acquisition and TLX's voice end-user desires BellSouth to continue to provide FastAccess to the end-user or wholesale ADSL to the end-user's ISP and has granted permission to TLX to request on the end-user's behalf that FastAccess or wholesale ADSL continue to be provided, TLX will follow the Local Ordering Handbook guidelines when ordering the UNE-P service. By allowing the ADL++ to remain on the line, TLX grants BellSouth the right to use the high frequency portion of its loop without charge, for the provision of FastAccess or wholesale ADSL.
- 2.10.3 If TLX wishes BellSouth to provide FastAccess or wholesale ADSL on the high frequency portion of a loop to a TLX end-user served by UNE-P, and the end-user has granted permission to TLX to request on the end-user's behalf that FastAccess or wholesale ADSL be provided, TLX will include the UNE-P telephone number

**BEFORE THE  
NORTH CAROLINA UTILITIES COMMISSION**

In the Matter of	)	
	)	
Joint Petition for Arbitration of	)	
	)	
NewSouth Communications Corp.,	)	Docket No. P-772, Sub 8
NuVox Communications, Inc.	)	Docket No. P-913, Sub 5
KMC Telecom V, Inc., KMC Telecom III LLC, and	)	Docket No. P-989, Sub 3
Xspedius Communications, LLC on Behalf of its	)	Docket No. P-824, Sub 6
Operating Subsidiary Xspedius Management Co.	)	Docket No. P-1202, Sub 4
Switched Services, LLC	)	
	)	
Of an Interconnection Agreement with	)	
BellSouth Telecommunications, Inc.	)	
Pursuant to Section 252(b) of the	)	
Communications Act of 1934, as Amended	)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSES TO  
THE JOINT PETITIONERS'  
FIRST SET OF INTERROGATORIES**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits the following Responses to the First Set of Interrogatories served by NewSouth Communications Corp , NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC's ("Joint Petitioners") dated April 13, 2004.

BellSouth incorporates herein by reference all of its general and specific objections filed on April 27, 2004. Any responses provided by BellSouth in response to this discovery will be provided subject to and without waiving any of BellSouth's previously filed objections

**SPECIFIC RESPONSES**



**ISSUE:** Should the agreement contain a general provision providing that BellSouth shall take financial responsibility for its own actions in causing, or contributing to unbillable or uncollectible revenue in addition to specific provisions set forth in Attachments 3 and 7?

**REQUEST:** Please state all circumstances of which you are aware in which BellSouth incurred, or caused, unbillable or uncollectible revenue under an ICA that were not addressed by provisions similar to those proposed in Attachments 3 and 7 of the Agreement.

**RESPONSE:** BellSouth is not aware of any circumstances in which BellSouth incurred or caused unbillable or uncollectible revenue under an ICA that were not addressed by provisions similar to those proposed in Attachments 3 and 7 of the Agreement.

**ISSUE:** Should each Party be required to include specific liability-eliminating terms in all of its tariffs and End User contracts (past, present and future), and, to the extent that a Party does not or is unable to do so, should it be obligated to indemnify the other Party for liabilities not eliminated?

**REQUEST:** Please state whether any BellSouth ICA does not require the contracting CLP to include liability-limiting terms in its tariffs and End User contracts and does not that CLP to indemnify BellSouth for End User claims. For all such ICA's, please provide: (a) the name of the CLP party to the interconnection agreement; (b) the effective date of the interconnection agreement; (c) the termination date of the interconnection agreement; (d) the paragraph or section number of the interconnection agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to Interrogatory No. G-5-1 on the grounds it is overly broad and unduly burdensome. The Joint Petitioners' request to provide information related to any BellSouth ICA is overly burdensome as it would require BellSouth to review hundreds of ICAs consisting of over 500 pages each to find the particular language that Joint Petitioners request, assuming it even exists. BellSouth further objects to this interrogatory on the grounds it seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to and without waiving the foregoing objections, please see BellSouth's Response to Joint Petitioner's 1<sup>st</sup> Request for Production of Documents, Item No. G-5-1.

**ISSUE:** What should the indemnification obligations of the parties be under this Agreement?

**REQUEST:** Please state whether any BellSouth ICA contains indemnification provisions other than those proposed by BellSouth in Section 10.5 of the General Terms and Conditions of the Agreement. For all such ICA's, please provide: (a) the name of the CLP party to the interconnection agreement; (b) the effective date of the interconnection agreement; (c) the termination date of the interconnection agreement; (d) the paragraph or section number of the interconnection agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to Interrogatory No. G-7-1 as overly broad and unduly burdensome. The Joint Petitioners' request to provide information related to any BellSouth ICA is overly burdensome as it would require BellSouth to review hundreds of ICAs consisting of over 500 pages each to find the particular language that Joint Petitioners request, assuming it even exists. BellSouth further objects to this interrogatory on the grounds it seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to and without waiving the foregoing objections, please see BellSouth's response to Joint Petitioner's 1<sup>st</sup> Request for Production of Documents, Item G-7-1.

**ISSUE:** In the event of such conversion [from a UNE or Combination to Other Services or tariffed BellSouth access service], what rates should apply?

**REQUEST:** Please identify the specific methods, procedures, and functions performed, and state the amount and type of the costs that BellSouth incurs from each such method, procedure and function, in converting UNEs or Combinations (or parts thereof) to a tariffed BellSouth access services. Include a BellSouth cost study and cost study information compiled in accordance with FCC TELRIC rules.

**RESPONSE:** BellSouth objects to this interrogatory in that the request is vague and imprecise in that specific access services are not identified. BellSouth also objects because providing a response requires the disclosure of confidential, proprietary cost information and to the extent the interrogatories imposes an obligation on BellSouth that doesn't exist under the law.

Additionally, BellSouth does not have a cost study for the specific activities requested. Disconnect cost associated with UNEs or Combinations are provided in BellSouth's TELRIC study filed in NCUC Docket No. P-100, Sub 133d (see October 1, 2002 & September 29, 2003 versions), which is proprietary. Activities and procedures performed for each individual cost element are included in the cost study documentation. However, TELRIC methodology is only applicable for UNE costing and is not utilized to cost services.

**ISSUE:** What rates, terms and conditions should apply in the event of a termination, re-termination, or physical rearrangements of circuits?

**REQUEST:** Please identify the specific methods, procedures, and functions performed, and state the amount and type of the costs that BellSouth incurs from each such method, procedure and function, in converting a circuit from UNEs or Combinations to Other Services or BellSouth tariffed access services. Include a BellSouth cost study and cost study information compiled in accordance with FCC TELRIC rules.

**RESPONSE:** The following information is responsive to this Interrogatory:

- BellSouth's Unbundled Dedicated Transport Product Team, Implementation Guide - UNE to Special Access (SPA) Conversions.

Also see BellSouth's response to the Joint Petitioners' First Set of Interrogatories, Item No. 2-4-(B)-1. Furthermore, see BellSouth's response to the Joint Petitioners' First Requests for Production of Documents, Item No. 2-5(C)-1.

**ISSUE:** What rates, terms and conditions should apply for Routine Network Modifications pursuant to 47 C.F.R. §51.319(a)(8) and (e)(5)?

**REQUEST:** Please identify the specific Routine Network Modifications that BellSouth did not account for in cost study information submitted to the Commission in the context of a proceeding during which the Commission determined, established or adopted UNE rules. Include a BellSouth cost study and cost study information compiled in accordance with FCC TELRIC rules.

**RESPONSE:** BellSouth objects to this request to the extent it requires the disclosure of confidential and proprietary cost information. BellSouth also objects to the extent providing a response to this interrogatory imposes an obligation on BellSouth that does not exist under the law.

Subject to this objection and without waiving this objection, the vast majority of Routine Network Modifications consists of the removal of bridged tap and load coils. The remainder of the modifications include such things as opening manholes, splice covers, etc. The costs of these items are provided in the A.17 Line Conditioning series of cost elements. See BellSouth's TELRIC study filed in NCUC Docket No. P-100, Sub 133d (see October 1, 2002 & September 29, 2003 versions), which is proprietary.

**ISSUE:** Should the recurring charges for UNEs, Combinations and Other Services be prorated based upon the number of days that the UNEs are in service?

**REQUEST:** Please explain how minimum billing periods or minimum periods of service for UNEs, Combinations or Other Services were accounted for in cost study information submitted to the Commission in the context of a proceeding during which the Commission determined, established or adopted UNE rates.

**RESPONSE:** BellSouth objects to this request to the extent it requires the disclosure of confidential and proprietary cost information. BellSouth also objects to the extent providing a response to this interrogatory imposes an obligation on BellSouth that does not exist under the law. Moreover, BellSouth objects on the grounds that the interrogatory is vague and ambiguous as the phrase "minimum billing periods" or "minimum periods of service" is not defined.

Subject to this objection and without waiving this objection, the UNE cost studies do not have a specific cost element for minimum billing periods.

**ISSUE:** Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

**REQUEST:** Please identify and state the amount of all costs that BellSouth incurs when removing bridged taps from loops that it will use to provide BellSouth service to End Users, and explain, where appropriate, any differentiation of costs (in terms of type and amount) in removing bridged taps of different lengths (e.g. a 3000-foot tap versus a 4000-foot tap). Include a BellSouth cost study and cost study information compiled in accordance with FCC TELRIC rules.

**RESPONSE:** BellSouth objects to this request to the extent it requires the disclosure of confidential and proprietary cost information. BellSouth also objects to the extent providing a response to this interrogatory imposes an obligation on BellSouth that does not exist under the law.

Subject to and without waiving the above objection, for UNEs, the cost of bridged tap removal is provided in element A.17.3. See BellSouth's TELRIC study filed in NCUC Docket No. P-100, Sub 133d (see October 1, 2002 & September 29, 2003 versions), which is proprietary. The cost of bridged tap removal associated with element A.17.3 is excluded from the maintenance factors utilized in the UNE cost studies by excluding service order related expenses. For an explanation of this methodology, see Section 4, Plant Specific Expense Factor of the narrative of the aforementioned UNE filings.



**ISSUE:** Should the Agreement contain a provision barring Line Conditioning that would result in the modification of a Loop in such a way that it no longer meets the technical parameters of the original Loop?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding any limits or restrictions that BellSouth places on its obligation to perform line conditioning. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to and without waiving the foregoing objections, please see also BellSouth's Response to Joint Petitioner's 1<sup>st</sup> Request for Production of Documents, Item 2-21(A)-1.

**ISSUE:** Should BellSouth be required to provide access to Dark Fiber Loops for test access and testing at any technically feasible point?

**REQUEST:** Please identify BellSouth's policies, practices, methods and procedures for testing Dark Fiber Loops, including the points on the loop facility that are accessed for such tests.

**RESPONSE:** The following information is responsive to this Interrogatory:

- UDT Service Rearrangement
- Outside Plant and Engineering (OSP&E) Guidelines for Unbundled Dark Fiber, RL 03-07-010BT
- Construction Guidelines

Please also see BellSouth's response to Joint Petitioner's 1<sup>st</sup> Request for Production of Documents, Item 2-24-1

**ISSUE:** Where BellSouth provides such transport or services to CLP and its End Users, should BellSouth be required to do so without charge until such time as it produces an amendment proposal and the Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to the rates, terms and conditions under which DSL service of some kind is provided to a CLP or the customers of a CLP served via UNEs purchased from BellSouth. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions

**RESPONSE:** BellSouth objects to this interrogatory on the grounds that it is vague and ambiguous because the phrase "DSL service" is not defined. In addition, BellSouth objects because it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration

BellSouth Telecommunications, Inc.  
North Carolina Utilities Commission  
Docket Nos. P-772, Sub 8; P-913, Sub 5; P-989,  
Sub 3; P-824, Sub 6; and P-1202, Sub 4  
Joint Petitioners' 1<sup>st</sup> Set of Interrogatories  
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**RESPONSE: (CONT.)**

herein. Moreover, the information requested is irrelevant because it appears to seek information regarding the provision of "DSL service", which is not a telecommunications service and thus outside the scope of a Section 251 arbitration.

**ISSUE:** What terms should govern CLP access to test and splice Dark Fiber Transport?

**REQUEST:** Please identify BellSouth's policies, practices, methods and procedures for testing and splicing Dark Fiber Transport, including the points on the loop facility that are accessed for such tests and splices.

**RESPONSE:** The following documents are responsive to this request:

- UDT Service Rearrangement [See BellSouth's Response to the Joint Petitioners' First Set of Interrogatories, Item No. 2-5(C)-3]
- Outside Plant and Engineering (OSP&E) Guidelines for Unbundled Dark Fiber, RL 03-07-10BT [See BellSouth's Response to the Joint Petitioners' First Set of Interrogatories, Item No. 2-24-1]
- Construction Guidelines[See BellSouth's Response to the Joint Petitioners' First Set of Interrogatories, Item No. 2-24-1]
- Unbundled Dedicated Transport – Unbundled Dark Fiber CLP Information Package which may be found on the Interconnection website at <http://www.interconnection.bellsouth.com/guides/html/unes.html>

**ISSUE:** Should the Parties be obligated to perform CNAM queries and pass such information on all calls exchanged between them, regardless of whether that would require BellSouth to query a third party database provider?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding whether BellSouth will issue CNAM queries and pass such information on calls exchanged between itself and another carrier. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. Moreover, the information requested is irrelevant because it apparently seeks information regarding the provision of a non-telecommunications service and thus outside the scope of a Section 251 arbitration.

**ISSUE:** What terms should govern BellSouth's obligation to provide access to OSS?

**REQUEST:** Identify any and all OSS-related obligations contained in FCC and Commission rules and orders that are not included in BellSouth's proposed language for Attachment 6 of the Agreement.

**RESPONSE:** BellSouth objects to this request on the grounds that it is vague and ambiguous as the phrase "FCC and Commission rules" is not defined. Without knowing what rules Joint Petitioners are referring to, BellSouth cannot provide a response.

Subject to this objection and without waiving this objection, BellSouth assumes that this interrogatory is requesting that it identify any and all obligations to provide access to OSS that are not included in Attachment 6. The FCC and state commissions have found that BellSouth provides nondiscriminatory access to its pre-ordering, ordering and provisioning, maintenance and repair, and billing OSS. BellSouth has included information about its obligation to provide this access in Attachment 6 and in Attachment 7. Consequently, BellSouth believes it has included all OSS-related obligations in Attachments 6 and 7.

**ISSUE:** Should CLP be permitted to connect to BellSouth's switch via a Cross Connect or any other technically feasible means of interconnection?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding the facilities by which CLPs may connect to BellSouth's switch from a point within the same serving wire center. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to this objection and without waiving this objection, BellSouth does not have any documents related to a policy regarding the method of interconnection by which a CLP may interconnect to BellSouth's switch within the same Serving Wire Center. However, BellSouth's position is a CLP may interconnect with BellSouth's switch via any technically feasible method.



**ISSUE:** Should BellSouth be required to provide upon request, for any trunk group outage that has occurred 3 or more times in a 60-day period, a written root cause analysis report?

**REQUEST:** Please identify and explain the circumstances under which BellSouth will conduct and prepare for itself, a root cause analysis for trunk group outages.

**RESPONSE:** BellSouth objects to this interrogatory on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence. The FCC as well as this Commission has held that BellSouth provides competitors with nondiscriminatory access to its OSS and that BellSouth need not mechanize all of its preordering and ordering functions in order to provide nondiscriminatory access. Thus, any information regarding BellSouth's retail services is irrelevant to this proceeding. Moreover, BellSouth objects on the grounds that it is vague and ambiguous as the phrase "network facilities" is not defined.

**ISSUE:** What provisions should apply regarding failure to provide accurate and detailed usage data necessary for the billing and collection of access revenues?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding a failure by BellSouth or a contracting CLP to provide accurate and detailed usage data necessary for the billing and collection of access revenues within a specific timeframe. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to this objection and without waiving this objection, BellSouth does not have any documents responsive to this Interrogatory.

**ISSUE:** Under what terms should CLP be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLP originated traffic?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts, agrees or refers to a policy regarding whether BellSouth is obligated to pay third parties to terminate the CLP's originated traffic. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. BellSouth also objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. Finally, to the extent this interrogatory requires BellSouth to disclose the terms and conditions of confidential, commercial agreements with third-parties, BellSouth objects.

Subject to this objection and without waiving this objection, information responsive to this request can be found in the Standard Interconnection Agreement, Attachment 3 ¶ 7.6.2, which is available at the following URL link:  
[http://www.interconnection.bellsouth.com/become\\_a\\_clec/docs/ics\\_agreement.pdf](http://www.interconnection.bellsouth.com/become_a_clec/docs/ics_agreement.pdf)

**ISSUE:** While a dispute over jurisdictional factors is pending, what factors should apply in the interim?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding the jurisdictional factors that it develops for application in lieu of jurisdictional factors reported by the originating party. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to and without waiving the foregoing objections, BellSouth identifies The Factors Guide as being responsive to this Interrogatory. See BellSouth's Response to Joint Petitioner's 1<sup>st</sup> Request for Production of Documents, Item 3-5-1.

**ISSUE:** Should BellSouth be able to charge the CLP a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

**REQUEST:** Please identify each distinct TIC rate charged by BellSouth to interconnecting carriers?

**RESPONSE:** BellSouth objects to this interrogatory insofar as the request is vague, ambiguous, overly broad, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of this request.

Subject to this objection and without waiving this objection, BellSouth is unsure of the information being requested. If the request is to identify the TIC rate that is charged to each of the CLPs with whom BellSouth is interconnected, please see [http://www.interconnection.bellsouth.com/become\\_a\\_clec/docs/ics\\_agreement.pdf](http://www.interconnection.bellsouth.com/become_a_clec/docs/ics_agreement.pdf) In addition, prior to November 2003, BellSouth charged a TIC rate of \$0.0015 per minute of use. In November 2003, BellSouth raised this rate to \$0.0025; however, BellSouth is only seeking the \$0.0015 rate in this agreement. See also BellSouth's Response to Joint Petitioner's 1<sup>st</sup> Request for Production of Documents, Item 3-6-1.

- ISSUE:** Should BellSouth be able to charge the CLP a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?
- REQUEST:** Please identify the TIC rate BellSouth seeks include in the Agreement, and identify and state the amount and origin of all costs that the TIC rate is designed to recover?
- RESPONSE:** The TIC rate proposed by BellSouth to the CLPs is \$0.0015 per MOU. BellSouth is not required by the Telecommunications Act of 1996 to provide the transiting function and, thus, the TIC rate was not developed using the TELRIC methodology of forward-looking cost-based rates. Transit Traffic is an alternative to direct interconnection and a market based service and, thus, the TIC rate was developed as a market based additive. As a result, BellSouth costs are not relevant to this proceeding and BellSouth objects to producing any cost information regarding the TIC rate.

**ISSUE:** Should BellSouth be able to charge the CLP a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

**REQUEST:** Please identify the percentage of the proposed TIC rate that BellSouth seeks include in the Agreement that is attributable to unduplicated cost recovery and that which represents profit.

**RESPONSE:** BellSouth objects to this request on the grounds that it is overly broad and unduly burdensome. BellSouth has thousands of ICAs, legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this request. BellSouth further objects to this request on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website ([http://cpr.bellsouth.com/clec/docs/all\\_states/index7.htm](http://cpr.bellsouth.com/clec/docs/all_states/index7.htm)). Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Moreover, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

As a result, BellSouth costs are not relevant to this proceeding and BellSouth objects to producing any cost information regarding the TIC rate.

**ISSUE:** What should those rates [for OCn level interconnections trunks and facilities] be?

**REQUEST:** Please identify and state the amount of all costs that BellSouth incurs, or would incur, in order to permit OC-level interconnection with a CLP. Include a BellSouth cost study and cost study information compiled in accordance with FCC TELRIC rules.

**RESPONSE:** BellSouth objects to this request to the extent it requires the disclosure of confidential and proprietary cost information. BellSouth also objects to the extent providing a response to this interrogatory imposes an obligation on BellSouth that does not exist under the law.

Subject to this objection and without waiving this objection, the United States Court of Appeals decision of March 2, 2004 ruled that OC-level interconnection was not required as a UNE. However, see the following cost elements in BellSouth's TELRIC study filed in NCUC Docket No. P-100, Sub 133d (see October 1, 2002 & September 29, 2003 versions), which is proprietary:

OC-n Local Channel Elements (D.5.10; D.5.11, D.5.13; D.5.14; D.5.16; D.5.17; and D.5.19)

OC-n Local Loop Elements (A.16.4; A.16.5; A.16.7; A.16.8; A.16.10; A.16.11; and A.16.13)

OC-n InterOffice Facility Elements (D.7; D.8 and D.9)



**ISSUE:** What rates should apply for interconnection trunks and facilities in the event that a rate is not set forth in Exhibit A?

**REQUEST:** Please identify any and all interconnection trunks and facilities for which a rate is not provided in Exhibit A of the Attachment 3, and state the specific rates and charges BellSouth proposes to apply to such interconnection trunks and facilities.

**RESPONSE:** The following is a non-exclusive list of trunks/facilities that are not set forth in Exhibit A of the Attachment 3 and would be charged from the BellSouth Access Services Tariff:

- Feature Group A
- Feature Group B
- Feature Group C
- Feature Group D
- BellSouth Dedicated Ring rate elements (Customer Nodes, etc.)

- ISSUE:** What definition of "Cross Connect" should be included in the Agreement?
- REQUEST:** Please identify facilities that are in use in a BellSouth serving wire center to connect CLP facilities to BellSouth facilities that are not considered "Cross Connects," under BellSouth's proposed definition, and state the rate applicable to each such facility.
- RESPONSE:** BellSouth is not aware of any configuration where CLP facilities are interconnected with BellSouth facilities without the use of cross-connections.

ISSUE: Where grandfathering is appropriate, which rates should apply?

REQUEST: Identify all documents, including but not limited to agreements, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding whether grandfathered rates apply or should apply to collocation arrangements. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

RESPONSE: BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to this objection and without waiving this objection, BellSouth has no responsive documents.

**ISSUE:** Under the fused amp billing option, how will recurring and non-recurring charges be applied and what should those charges be?

**REQUEST:** Identify all documents, including but not limited to agreements, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding how recurring charges are or should be applied to CLPs under fused amp billing arrangements for power. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to this objection and without waiving this objection, information responsive to this interrogatory can be found in the Standard Interconnection Agreement, Attachment 4-Central Office and Attachment 4-Collocation Rates, which is available at the following URL link:

[http://www.interconnection.bellsouth.com/become\\_a\\_clec/docs/ics\\_agreement.pdf](http://www.interconnection.bellsouth.com/become_a_clec/docs/ics_agreement.pdf)

- ISSUE: Under the fused amp billing option, how will recurring and non-recurring charges be applied and what should those charges be?
- REQUEST: Identify all documents, including but not limited to agreements, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding how non-recurring charges are or should be applied to CLPs under fused amp billing arrangements for power. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.
- RESPONSE: BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.
- Subject to this objection and without waiving this objection, BellSouth does not currently charge non-recurring rates for power fused amp billing in North Carolina.

ISSUE: Should CLP be permitted to choose between a fixed amp billing option and a power usage metering option?.

REQUEST: Identify all documents, including but not limited to agreements, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials; in which BellSouth discusses, explains, adopts or refers to a policy regarding whether a CLP may adopt a power usage metering option for collocation power charges. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

RESPONSE: BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to this objection and without waiving this objection, BellSouth does not offer a power usage metering option in North Carolina.

**ISSUE:** If power usage metering is allowed, how will recurring and non-recurring charges be applied and what should those charges be?

**REQUEST:** Identify all documents, including but not limited to agreements, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding how recurring charges are or should be applied to CLPs under power usage metering arrangements for power. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to this objection and without waiving this objection, BellSouth does not offer a power usage metering arrangement in North Carolina.

**ISSUE:** If power usage metering is allowed, how will recurring and non-recurring charges be applied and what should those charges be?

**REQUEST:** Identify all documents, including but not limited to agreements, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding how the non-recurring charges are or should be applied to CLPs for power under power usage metering arrangements. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to this objection and without waiving this objection, BellSouth does not offer a power usage metering arrangement in North Carolina.



**ISSUE:** If power usage metering is allowed, how will recurring and non-recurring charges be applied and what should those charges be?

**REQUEST:** Please provide all information about the manner in which BellSouth apportions the costs of provisioning DC power into infrastructure related and non-infrastructure related categories or recurring or non-recurring charges. Include relevant BellSouth cost study and cost study information compiled in accordance with FCC TELRIC rules.

**RESPONSE:** BellSouth objects to this request to the extent it requires the disclosure of confidential and proprietary cost information. BellSouth also objects to the extent providing a response to this interrogatory imposes an obligation on BellSouth that does not exist under the law.

Subject to this objection and without waiving this objection, BellSouth does not have a specific TELRIC study for North Carolina for the provisioning of DC power. However, the cost of DC power is one component of element H.1.8 in BellSouth's TELRIC study filed in NCUC Docket No. P-100, Sub 133j (see April 1, 2002 version), which is proprietary.

ISSUE: Should payment history be included in the CSR?

REQUEST: Identify all documents, including but not limited to agreements, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding whether a customer's payment history will be or should be included in or removed from CSR information provided to CLPs. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

RESPONSE: BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Moreover, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. Finally, BellSouth objects to the extent this interrogatory requires the disclosure of CPNI.

Subject to and without waiving the foregoing objections, please see BellSouth's response to Joint Petitioner's 1<sup>st</sup> Request for Production of Documents, Item No. 6-1-1.

- ISSUE: Should BellSouth be allowed to assess manual service order charges on CLP orders for which BellSouth does not provide an electronic ordering option?
- REQUEST: Please identify all network facilities and services used by BellSouth to provision BellSouth retail services that must be manually ordered.
- RESPONSE: BellSouth objects to this interrogatory on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence. The FCC as well as this Commission has held that BellSouth provides competitors with nondiscriminatory access to its OSS and that BellSouth need not mechanize all of its preordering and ordering functions in order to provide nondiscriminatory access. Thus, any information regarding BellSouth's retail services is irrelevant to this proceeding. Moreover, BellSouth objects on the grounds that it is vague and ambiguous as the phrase "network facilities" is not defined.

- ISSUE:** What rate should apply for Service Date Advancement (a/k/a service expedites)?
- REQUEST:** Please identify and state the amount of all costs that BellSouth incurs to perform a Service Date Advancement (or "service expedite"). Include a BellSouth cost study and cost study information compiled in accordance with FCC TELRIC rules.
- RESPONSE:** BellSouth objects to this interrogatory to the extent it requires the disclosure of confidential and proprietary cost information. BellSouth also objects to the extent providing a response to this interrogatory imposes an obligation on BellSouth that does not exist under the law.

Subject to this objection and without waiving this objection, BellSouth's Service Date Advancement (or "service expedite") charge is an alternative to direct interconnection and a market based service and, thus, the Service Date Advancement rate was developed as a market based additive and there is no TELRIC cost study for this service.. Furthermore, BellSouth's costs regarding this service are not relevant to this proceeding and BellSouth objects to producing any information.

- ISSUE: Should charges for substantially similar OSS functions performed by the parties be reciprocal?
- REQUEST: Identify and explain all orders and requests (e.g., requests for Customer Service Records and requests to switch over or "port" a customer) that BellSouth will make under the Agreement or has previously made to a CLP.
- RESPONSE: BellSouth objects to this interrogatory on the grounds that it is vague, ambiguous, and unintelligible. Without clarifying information, BellSouth is unable to provide a response.

**ISSUE:** Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding whether a CLP may submit an order for Mass Migration of customers and associated service arrangements from another CLP to itself. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to this objection and without waiving this objection, see BellSouth's response to Joint Petitioner's 1<sup>st</sup> Request for Production of Documents, Item No. 6-11(A)-1.

- ISSUE:** Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?
- REQUEST:** Please identify and describe all instances in which BellSouth performed a Mass Migration of customers from one CLP to another CLP, including the charges assessed on the requesting CLP and all methods, procedures, systems and databases involved.
- RESPONSE:** To date , no CLP has requested and BellSouth has not completed any Mass Migrations of customers from one CLP to another CLP.

ISSUE: If so, what rates should apply?

REQUEST: Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding the rates applicable to Mass Migrations to a CLP that were submitted on an electronic LSR or spreadsheet. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

RESPONSE: BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to and without waiving the foregoing objections, please see BellSouth's response to Joint Petitioner's 1<sup>st</sup> Request for Production of Documents, Item No. 6-11(A)-1.



ISSUE: What should be the interval for such mass migrations of services?

REQUEST: Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding the interval within which BellSouth will perform Mass Migrations of customers from one CLP to another CLP. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

RESPONSE: BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to and without waiving the foregoing objections, please see, BellSouth's response to Joint Petitioner's 1<sup>st</sup> Request for Production of Documents, Item No. 6-11(C)-1.

**ISSUE:** Should there be a time limit on the parties' ability to engage in backbilling?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, tariffs, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding whether a time limit does or should apply to Backbilling under an interconnection agreement. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to and without waiving the foregoing objections, see BellSouth's Interconnection Agreements are publicly available at the following website: [http://cpr.bellsouth.com/clec/docs/all\\_states/index7.htm](http://cpr.bellsouth.com/clec/docs/all_states/index7.htm).

- ISSUE:** What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA?
- REQUEST:** Please identify and state the amount of all costs that BellSouth incurs to make a records change to reflect a change in corporate name or other LEC identifiers. Include a BellSouth cost study and cost study information compiled in accordance with FCC TELRIC rules.
- RESPONSE:** BellSouth objects to this request to the extent it requires the disclosure of confidential and proprietary cost information. BellSouth also objects to the extent providing a response to this interrogatory imposes an obligation on BellSouth that does not exist under the law.
- RESPONSE:** Subject to and without waiving this objection, Cost Studies and supporting documents are enclosed for the following:
- Transfer of Ownership-Records Change
  - Transfer of Ownership-Transport
  - Transfer of Ownership-Transport-Project Managed
  - Transfer of Ownership-UNE-P
- Furthermore, the CLEC-to-CLEC Conversion cost studies are included in BellSouth's TELRIC study filed in NCUC Docket No. P-100, Sub 133d (see October 1, 2002 & September 29, 2003 versions), which is proprietary.

**ISSUE:** What intervals should apply to such changes?

**REQUEST:** Please identify the method, procedures, systems and databases that BellSouth uses in order to perform a records change made to reflect a change in corporate name or other LEC identifiers.

**RESPONSE:** Below are the nonexclusive methods, procedures, systems and databases that BellSouth uses in order to perform a records change to reflect a change in corporate name or other LEC identifiers.

- Application for Telephone Number Load Administration and Selection (ATLAS)
- Business Office CABS (BOCABS)
- Carrier Access Billing System (CABS) Account Database
- CABS Rate Product Catalog
- CABS Factor Table
- CBO Table
- Corporate Facilities Database (CFD)
- Central Office Features File Interface (COFFI)
- Circuit Provisioning Group (CPG)
- Circuit Provisioning Status System – Trouble Administration (CPSS-TA)
- Distributed Support Application (DSAP)
- Electronic Communications Trouble Administration (ECTA)
- Electronic Data Interchange (EDI)
- Facility Assignment and Control System (FACS)
- GAC/ACNA Table
- Hands-Off Assignment Logic System (HAL)
- LNP Automation (LAUTO)
- Local Exchange Navigation System (LENS)
- Local Exchange Ordering System (LEO)
- Local Exchange Service Order Generator (LESOG)
- Local Facility Assignment & Control System (LFACS)
- Loop Maintenance Operations System (LMOS)

RESPONSE: (Con'd)

- LNP Gateway
- Local Service Request Router (LSRR)
- MARCH
- Mechanized Loop Testing (MLT)
- Order Manager (OM)
- Operational Support Systems (OSS)
- Programmable Rules Engine (PRE)
- Predictor
- Product/Service Inventory Management System (P/SIMS)
- Regional Street Address Guide (RSAG)
- ServiceGate® Gateway (SGG)
- Service Order Analysis & Control (SOAC)
- Service Order Communications System (SOCS)
- Trunk Integrated Records Keeping System (TIRKS)
- Trouble Analysis Facilitation Interface (TAFI)
- Telecommunications Access Gateway (TAG)
- Work Force Administration/Control (WFA/C)

BellSouth Telecommunications, Inc.  
North Carolina Utilities Commission  
Docket Nos. P-772, Sub 8; P-913, Sub 5; P-989,  
Sub 3; P-824, Sub 6; and P-1202, Sub 4  
Joint Petitioners' 1<sup>st</sup> Set of Interrogatories  
April 13, 2003  
Item No. 7-3-1  
Page 1 of 1

**ISSUE:** When should payment of charges for service be due?

**REQUEST:** Please explain and describe the circumstances in which BellSouth would affix a bill issue date on a bill generated after that particular date.

**RESPONSE:** There is no circumstance in which BellSouth would affix a bill issue date on a bill generated after that particular date.

ISSUE: When should payment of charges for service be due?

REQUEST: Please identify and summarize the what happens to a bill, in terms of procedures and the duration thereof, between the time it is issued and the time it is made available to CLP via posting or delivery.

RESPONSE: BellSouth objects to this interrogatory on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence. Information relating to BellSouth's payment and dispute of CLP bills is irrelevant to any issue in this proceeding. Moreover, BellSouth objects on the grounds that the interrogatory is vague and ambiguous as the interrogatory contains instructions that are unintelligible.

Subject to this objection and without waiving this objection, and in an attempt to be responsive, BellSouth states the following with respect to the Bill Mailing procedures.

1. Files are received via MAINFRAME or IPW (depending on the media type).
2. When Confirmation is received the file has been verified, it is released to be created in the media type designated.
3. Reports showing the account numbers created in the file are used to verify the account has been created.
4. The account is packaged appropriately and mailed.
5. Production time for each file varies with size.

**ISSUE:** How many months of billing should be used to determine the maximum amount of the deposit?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding a maximum deposit amount that may be required of a CLP that is less than two months billing. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to and without waiving the foregoing objections, BellSouth is not aware of any responsive documents.



**ISSUE:** Should the amount of the deposit that BellSouth requires from CLP be reduced by past due amounts owed by BellSouth to CLP?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding its practices with respect to disputing and paying charges imposed by CLPs. If an identified document is an ICA or agreement, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein. In addition, the requested information – BellSouth's practices regarding the payment and disputing of CLPs' bills – is irrelevant to this arbitration.

- ISSUE:** Should the amount of the deposit that BellSouth requires from CLP be reduced by past due amounts owed by BellSouth to CLP?
- REQUEST:** Please state the average or approximate average time in which BellSouth disputes and the average or approximate average time in which BellSouth pays amount invoiced by CLPs. Include an explanation of assumptions used and the manner in which the figures presented were derived.
- RESPONSE:** BellSouth objects to this interrogatory on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence. Information relating to BellSouth's payment and dispute of CLP bills is irrelevant to any issue in this proceeding. Moreover, BellSouth objects on the grounds that the interrogatory is vague and ambiguous as the interrogatory contains instructions that are unintelligible.

**ISSUE:** Under what conditions may BellSouth seek additional security deposit from CLP?

**REQUEST:** Identify all documents, including but not limited to ICAs, agreements that are not ICAs, memoranda, legal pleadings, tariffs, policy statements, policy manuals and training materials, in which BellSouth discusses, explains, adopts or refers to a policy regarding whether BellSouth may seek an additional deposit from a CLP. If an identified document is an ICA or an agreement that is not an ICA, please provide: (a) the name of the other party to the agreement; (b) the effective date of the agreement; (c) the termination date of the agreement; (d) the paragraph or section number of the agreement which contain the relevant provisions.

**RESPONSE:** BellSouth objects to this interrogatory on the grounds it is overly broad and unduly burdensome. BellSouth has thousands of "ICAs", legal pleadings, tariffs, and other documents that BellSouth would need to locate, search, and review in order to respond to this interrogatory. BellSouth further objects to this interrogatory on the grounds it potentially seeks information that is already a matter of public record before this or another state commission or is readily accessible to the Joint Petitioners through publicly available means; e.g., publicly accessible website. Particularly, in light of the voluminous nature of the Joint Petitioners' request, the Joint Petitioners are not entitled to require other parties to gather information that is equally available and accessible to the Joint Petitioners. Finally, BellSouth objects on the ground that the information requested is irrelevant and not likely to lead to the discovery of admissible evidence. The language contained in other ICAs and documents involving different carriers and facts and which resulted either from negotiation or arbitration is not relevant to the specific arbitration herein.

Subject to and without waiving this objection, BellSouth submits the following:

- Attachments 1 and 7 of the Bellsouth Standard Interconnection Agreement:  
[http://www.interconnection.bellsouth.com/become\\_a\\_clec/docs/ics\\_agreement.pdf](http://www.interconnection.bellsouth.com/become_a_clec/docs/ics_agreement.pdf).

RESPONSE (Cont'd):

- Section E2.4.1 of the North Carolina Access Services Tariff.
- Chapter 5 of the BellSouth Startup Guide:  
<http://www.interconnection.bellsouth.com/guides/activation/html/gstug001/index.htm>
- Interconnection Services Policy and Procedural Manual – 4/1/04

ISSUE: Under what conditions may BellSouth seek additional security deposit from CLP?

REQUEST: Please identify and explain the "material change in circumstances" to which BellSouth refers in its Position Statement in its Issues Matrix submitted in this proceeding.

RESPONSE: Examples of material changes in circumstances are included, but not limited to:

- a substantial increase in current charges on a deposit rated customer's account
- deteriorating financial condition
- news releases of fraud by company officers that could impact the credit risk
- slow payments to Bellsouth of billing minus disputes.
- Bond rating drops to below investment grade.

Respectfully submitted, this 12<sup>th</sup> day of May, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all parties of record by email this 12<sup>th</sup> day of May, 2004.

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